Oct 22,

J.D. Williamson

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1928

No. [redacted] 12

INTERNATIONAL SHOE COMPANY, PLAINTIFF IN ERROR,

vs.

I. FINKUS, GEORGE FRANKLIN, SAM BERNSTEIN, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

Rutherford Crow Clerk of the Supreme Court of Arkansas

FILED JULY 24, 1928

(32,853)

[illegible] Ally can [illegible] the first. The subsequent [illegible] Ally can [illegible] Offender [illegible] Person shall or ought to proceed under the Insolvent Act. The Bill Creditor has a right to mark his debt on account of Person to or order or else wrongs to Mal Party. He has right to have the Evidence by God &c. If have a determine Whether Bill was entitled to Discharge. Had the right to participate in dividend balance over Bill if not entitled to discharge. Here his participate was conditioned on discharge. Postponed until Bill discharge Creditor were [illegible] paid

(32,853)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 401

INTERNATIONAL SHOE COMPANY, PLAINTIFF IN ERROR,

vs.

I. PINKUS, GEORGE FRANKLIN, SAM DESSENT, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 8, 1927

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[fol. 1] [Caption omitted]

[fol. 2]

IN CHANCERY COURT OF CHICOT COUNTY

No. 4313

INTERNATIONAL SHOE COMPANY, Plaintiff,

vs.

I. PINKUS, Defendant, & M. A. THREET, M. A. THREET as Receiver, Sam Dessent, Bank of Dermott, Exchange Bank & Trust Company, Garnishees

COMPLAINT—Filed November 19, 1925

Comes the International Shoe Company, plaintiff herein, and, complaining of the defendant, I. Pinkus, and the garnishees, M. A. Threet, M. A. Threet as Receiver, Sam Dessent, Bank of Dermott, Exchange Bank & Trust Company, states:

That it is a corporation legally organized and engaged in doing business in interstate commerce; that its transactions had with the defendant, Pinkus, were transactions in interstate commerce; and that this plaintiff is authorized to maintain this suit.

That the defendant, I. Pinkus, and the garnishees, M. A. Threet, M. A. Threet as Receiver, Sam Dessent, Bank of Dermott, Exchange Bank & Trust Company, are all citizens and residents of the State of Arkansas, the last two named garnishees being banking corporations and authorized to do a general banking business in the said State of Arkansas.

That on the 24th day of August, 1925, the Common Pleas [fol. 3] Court of Chicot County, Arkansas, in a certain cause therein pending numbered 442 wherein the International Shoe Company was plaintiff and I. Pinkus was defendant, entered judgment in favor of said plaintiff and against said defendant in the sum of Four Hundred Sixty-three and 43/100 ($463.43) Dollars, together with interest

thereon from and after December 9th, 1924, at the rate of six per cent per annum, and for all costs incurred in said suit, said judgment being duly entered of record and is now to be found recorded at page 279 of Common Pleas Court Record "A," records of Chicot county, Arkansas, a certified copy of which said judgment is hereto attached, marked Exhibit "A" and made a part hereof.

That no part of said judgment having been paid, the said International Shoe Company did on November 18th, 1925, cause to be issued by the Clerk of the Common Pleas Court of Chicot County an execution thereon against the property of the said Pinkus and did place same in the hands of Calmes Merritt, Sheriff of said county, who reports that he is unable to find any property in said county belonging to the said I. Pinkus upon which to levy, a certified copy of which said execution, together with the sheriff's return thereon, being hereto attached, marked Exhibit "B" and made a part hereof.

That the garnishee, M. A. Threet, and the garnishees, M. A. Threet as Receiver, has in his possession or control certain moneys, the property of the defendant, I. Pinkus, which said moneys the said Threet and the said Threet as [fol. 4] Receiver acquired by reason of a sale of the stock of merchandise and fixtures belonging to the said Pinkus by and under certain proceedings now pending in the Chicot Chancery Court, wherein the said I. Pinkus is plaintiff and Ed Cannon and the other creditors of the said Pinkus, including the plaintiff, herein, are defendants, No. 4273, instituted under and by virtue of Act 48 (page 115) of the General Assembly of the State of Arkansas for the year 1897, said Act being approved on June 26th 1897, and being incorporated into and being Sections 5885 to 5893, both inclusive, of Crawford and Moses Digest of the Statutes of the State of Arkansas, a certified copy of all papers filed and orders and decrees entered in said cause being hereto attached, marked Exhibit "C" and made a part hereof.

That the Congress of the United States, pursuant to authority vested in said body under and by virtue of Art. 1, Sec. 8, Par. 4, of the Federal Constitution, did on July 1st, 1898, pass what is generally known as the "Federal Bankrupt Act."

That all of the said proceedings of the said Chicot Chancery Court, under and by virtue of said State statute, are void, and of no legal effect, inasmuch as the insolvency laws of this State were suspended and held in abeyance by the passage of said Bankrupt Act of Congress on July 1st, 1898, and the said Threet, individually, and as Receiver, is now holding said moneys, the property of the said I. Pinkus, without legal authority.

That the said moneys now in the hands of the said [fol. 5] Threet, individually, or as Receiver, belong to the said I. Pinkus, and are subject to the payment of said judgment in favor of this plaintiff, as aforesaid.

That the said Threet, individually and as Receiver, has said moneys now deposited in one or both of the banks named as garnishees herein; that the garnishee, Sam Dessent, owes the said Pinkus or the said Threet, individually or as Receiver, certain sums of money arising from a sale and purchase of said stock of merchandise and fixtures, the property of the said Pinkus.

Wherefore, The premises considered, plaintiff, International Shoe Company, prays process herein against said defendant, I. Pinkus and the garnishees, M. A. Threet, M. A. Threet Receiver, Sam Dessent, Bank of Dermott and the Exchange Bank & Trust Company; that they each be required to answer the interrogatories hereto attached, showing what goods, wares, chattels, merchandise, moneys, choses in action or other kinds of property, if any they have, belonging to the said I. Pinkus or in which the said Pinkus has an interest, and, particularly, that they each be required to answer hereto the amount of moneys derived or held by them or either of them arising from said sale of merchandise and fixtures under said insolvency proceedings; that a garnishment issue against each of said garnishees; that, upon a final hearing hereof, any moneys now in the hands of the said garnishees, the property of the said I. Pinkus, or if in which the said Pinkus has or had an [fol. 6] interest, be impounded and applied to the payment of said judgment in favor of this plaintiff, as aforesaid, and for any and all other legal and equitable relief to which it may be entitled.

J. D. Williamson, Streett & Burnside, Attys.

[fol. 7] EXHIBIT TO COMPLAINT

Interrogatories to be Answered under Oath by Each of the Garnishees, M. A. Threet, M. A. Threet as Receiver, Sam Dessent, Bank of Dermott, Exchange Bank & Trust Company

First. Were you on and after the date of the service of the writ of garnishment and summons herein indebted to the defendant, I. Pinkus? If so, how were you indebted and in what amount or amounts?

Second. Had you in your hands and possession on and after said date any goods, merchandise, chattels, moneys, choses in action, evidences of indebtedness or effects or other kinds of property owned by or in which the said Pinkus has any interest? If so, what was the nature and value thereof, particularly, what interest does the said Pinkus have therein, giving full particulars relative thereto?

Third. Had you in your hands and possession on and after said date any moneys arising from a sale of the stock of merchandise and fixtures belonging to I. Pinkus, which sale was made and had under orders of the Chicot Chancery Court? If so, give the amount and particulars?

Fourth. Have you in your hands and possession any moneys to the credit of M. A. Threet, individually, as receiver, or otherwise, which said moneys were derived from a sale of said stock of merchandise and fixtures belonging to the said I. Pinkus or in which the said Pinkus has or had an interest? If so, state the amount and particulars?

Fifth. Do you owe the said Threet, individually, as receiver or otherwise any moneys on open account or on note [fol. 8] or otherwise for merchandise and fixtures purchased by you at the Receiver's sale had under orders of Chicot Chancery Court in the case of I. Pinkus, plaintiff, v. Ed. Cannon, et al., defendants, No. 4273? If so, how much and give the particulars?

[fol. 9] EXHIBIT "A" TO COMPLAINT

CHICOT COUNTY COMMON PLEAS COURT, MONDAY, AUGUST 24, 1925

INTERNATIONAL SHOE COMPANY, Plaintiff,

vs.

I. PINKUS (Doing Business under the Firm Name and Style of New York Store), Defendant

Judgment

Now on this the 24th day of August, 1925, the same being a day of the adjourned term of the regular July term of this Court, this cause came on for hearing, and the plaintiff, International Shoe Company, being present in Court, by its attorneys, Streett & Burnside, and the defendants, I. Pinkus, though having duly entered his appearance to the within suit according to law, came not, but wholly made default, after having been called three times in open Court by the Sheriff as the law directs, and this cause being regularly reached on the calendar, and it appearing from the itemized, verified statement of account attached to the complaint in this case, as well as the evidence introduced in open court, that this is an action upon open account, for goods, wares and merchandise purchased by I. Pinkus from the plaintiff, during the years 1924 and 1925, which said goods, wares and merchandise were actually delivered to the defendant during said years, and that the amount of such account, after allowing all just credits, is the sum of $463.43, including interest until the 9th day of December, [fol. 10] 1924, at the legal rate, and the Court, being well and sufficiently advised in the premises, doth find that the defendant, I. Pinkus is indebted to the plaintiff, International Shoe Company, in the sum of $463.43 together with interest thereon at the rate of six per cent per annum from and after December 9th, 1924.

It is considered, ordered and adjudged that the plaintiff, International Shoe Company, do have and recover of and from the defendant, I. Pinkus, the sum of $463.43 and interest thereon at the rate of six per cent per annum from and after December 9th, 1924, together with all costs of this suit for which let execution issue as follows: If said debt, including interest and costs, is not paid by October 15, 1925,

let execution issue against the property of the defendant for one half of said judgment and, if the remaining one-half of said judgment be not paid by November 15, 1925, then let execution issue for the remaining one-half of said judgment, or if plaintiff prefer, it may wait until November 15, 1925 to let execution issue for the whole of said judgment in the event same is not paid by said time.

STATE OF ARKANSAS,
County of Chicot, ss:

I, R. W. Parrish, Clerk of the Common Pleas Court — and for the County and State aforesaid, do hereby certify that the annexed and foregoing two pages contain a true and perfect copy of a certain judgment rendered August 24, [fol. 11] 1925, an adjourned day of the regular July term of said Court in a cause therein pending wherein International Shoe Company were plaintiffs and I. Pinkus doing business under the firm name and style of New York Store was defendant, as therein set forth, and as the same appears of record at page 279 of Common Pleas Record "A" of the Records of Chicot County, Arkansas.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this the 18th day of November, 1925.

R. W. Parrish, Clerk, by (Signed) E. B. Dabney, D. C. (Seal.)

[fol. 12] EXHIBIT "B" TO COMPLAINT

Chicot County Common Pleas Court, Ex. No. 485

No. 448

INTERNATIONAL SHOE CO., Plaintiff,

vs.

I. PINKUS, Doing Business under the Name and Style of New York Store, Defendant

Writ of Execution

The State of Arkansas to the Sheriff of Chicot County, Greeting:

You are commanded that of the estate of I. Pinkus, the above named defendant, you cause to be made the sum of

Four Hundred Ninety-nine and 99/100 Dollars which International Shoe Co., the above named plaintiff late in the Common Pleas Court of Chicot county, recovered against said defendant for Four Hundred Sixty-three & 43/100 Dollars debt, with interest thereon at the rate of 6 per cent per annum from the 9th day of December, 1924, until paid; also the sum of Ten and 40/100 Dollars, same being the accrued costs in the above entitled cause; also the costs to accrue under this writ; and that you have said sums of money within sixty days to render to the said plaintiff his debt and interest and the costs aforesaid.

In witness whereof, I have hereunto set my hand as clerk of said Court and affixed hereto the seal thereof on this 18th day of November, 1925.

R. W. Parrish, Clerk, by (Signed) E. B. Dabney, D. C.

Endorsement on back: Writ of Execution. State of Arkansas, County of Chicot: Ex. No. 485. International [fol. 13] Shoe Co., Plaintiff, vs. I. Pinkus, doing business as New York Store, Defendant. This execution came to my hands on this 18th day of Nov. 1925 at 4 o'clock P. M. and I hereby return that I am unable to find any property belonging to the defendant upon which to levy same and hereby return same Nulla Bona. Given under my hand this 18th day of Nov. 1925. Calmes Merritt, Sheriff, by C. L. Mead, D. C. Debt, $463.43; Interest, 6% from 12-9-24, $26.16; Accrued Costs, $10.49.

State of Arkansas,
County of Chicot:

I, R. W. Parrish, Clerk of the Common Pleas Court within and for the County and State aforesaid, do hereby certify that the annexed and foregoing page contains a true and perfect copy of a Writ of Execution issued by me on November 18, 1925, under and by virtue of a judgment rendered in the Court of Common Pleas on August 24, 1925, an adjourned day of the regular July term of said Common Pleas Court, in a cause therein pending wherein International Shoe Co. was plaintiff and I. Pinkus, doing business under the name and style of New York Store was defendant; and also the return on said Writ of Execution

by the Sheriff; as therein set forth and as the same appears on said original Writ of Execution now on file among the papers in said cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this the 18th day of November, 1925.

R. W. Parrish, Clerk, by (Signed) E. B. Dabney, D. C. (Seal.)

[fol. 14] EXHIBIT "C" TO COMPLAINT

IN CHANCERY COURT OF CHICOT COUNTY

No. 4273

I. PINKUS, Plaintiff,

vs.

ED CANNON and All Other Creditors of Plaintiff, Defendants

PETITION TO BE DECLARED AN INSOLVENT AND FOR APPOINTMENT OF RECEIVER

Now comes I. Pinkus, of Dermott, Chicot County, Arkansas, and for his cause of action and petition to the Court, against the defendants, state and charges:

That this complainant is now insolvent and is unable to pay his just debts, and that he resides in Chicot County, Arkansas, and that it would be to the best interest of all parties, both creditors and debtor that a Receiver be appointed to take charge of all his property subject to the payment of his debts, and the same be by him liquidated according to law and distributed among his creditors as the law directs in such cases, and that all of the creditors be required to file with the court their stipulation for the use and benefit of the debtor as is prescribed for them to receive their share of said estate.

Plaintiff herewith files a complete list of all his creditors, the address of each and the sums due each, which is hereby made part of this petition and marked Exhibit "A" hereto.

Plaintiff further states that he is now ready to, and will

deliver any and all of his property to the receiver to be appointed by the Court, both real and personal, save his exemptions allowed under the law, to be by him liquidated and [fol. 15] distributed to his said creditors, after the payment of all costs herein.

Plaintiff further files herewith a complete list of all his property, showing the invoice price of the same as nearly as the same can be ascertained by petitioner, which is hereto attached, marked Exhibit "B" hereto and made part hereof; and appraised value of same marked Ex. "C" hereto.

Wherefore plaintiff prays that he be declared an Insolvent, and that a Receiver be appointed by this Court in vacation to immediately take over any and all of his property, less his exemptions allowed him under the Constitution as the head of a family, and the same be applied to the payment of his debts as the law directs; that the court immediately allow his said exemptions as aforesaid. Plaintiff further pray that said creditors be required to file with this Court their stipulation to the use and benefit of this debtor, agreeing to accept the same in full satisfaction of their demand against him, and that after the expiration of ninety days from the granting of this petition a proper distribution be made by said Receiver, paying his said creditors in full, and upon final hearing of this cause that he be granted a full and complete discharge from any and all of his debts and obligations to his creditors, dischargeable under the law, and for all the costs herein expended, and for all other general special and legal relief and plaintiff will ever pray.

I. Pinkus, after first being duly sworn, deposes and states that to the best of his knowledge and belief, the statements [fol. 16] made in the foregoing petition are true and correct, as he verily believes.

(Signed) I. Pinkus.

Subscribed and sworn to before me on this the 24th day of Aug. 1925. John M. Golden, Notary Public. My com. expires 3 27 26. (Seal.)

Golden & Golden, Attorneys for Petitioner.

Exhibit "A" to Petition

Ed Cannon	Dermott, Ark	13 50
S. Levy & Son	Memphis, Tenn	342 20
S. Lebouitz & Company	Memphis, Tenn	61 56
Memphis Paper Company	Memphis, Tenn	21 26
Black Brothers Milling Co	Memphis, Tenn	46 76
Inter State Jobbing House	Little Rock Ark	80 00
Doyle Dry Goods Co	Little Rock, Ark	421 86
Advance Dress Co	Chicago, Ill	20 00
J. Friedman & Company	Chicago, Ill.	9 13
Shnayder Trunk Company	Denver, Col	39 50
Bluff City Shoe Company	Hannibal, Mo	204 20
Helena Dry Goods Company	Helena, Ark	228 13
Seward Trunk Company	Petersburg, Va	32 50
I. Baer Company	Monroe, La	68 61
Blue Jay Mfg. Co	Huntington, W.Va.	32 50
Wolf Brothers	McGhee, Ark	247 13
L. Glick	New York, N. Y.	309 50
Rosebloom Brothers	New York, N. Y	27 50
[fol. 17] Edelson Brothers	New York, N. Y	11 50
S. Perling & Brothers	New York, N. Y	57 50
Lincoln Fatler Company	New York, N. Y	25 50
Kahn & Diamond	New York, N. Y	27 39
Midler & Gleen	New York, N. Y	90 00
Epstein Henning Company	Nashville, Tenn.	116 00
Levy & Zandler	Nashville, Tenn.	195 00
Greens Pan Brothers	Nashville, Tenn.	263 10
M. N. Grief & Sons	Nashville, Tenn.	337 00
Bogatzky Bros	Nashville, Tenn.	511 50
Harris Salinsky	Nashville, Tenn.	432 00
M. Lipshitz	St. Louis, Mo	2,545 00
M. Carp	St. Louis, Mo	1,020 85
Goldman Brothers	St. Louis, Mo	37 50
H. Siegfield & Sons	St. Louis, Mo	177 24
Peters Shoe Company	St. Louis, Mo.	457 23
Hood Rubber Company	St. Louis, Mo	30 24
Rowe Milling Company	St. Louis, Mo	150 00
Sigmund Glaser Company	St. Louis, Mo	91 65
Fankel Brothers	St. Louis, Mo	31 50
Modern Skirt Company	St. Louis, Mo	95 00

(See: Jas. M. Reardon.)		
Bettman Kleinhauser Clothing Co.	St. Louis, Mo	257 17
Sloan Force Hat Company	St. Louis, Mo	283 50
Kirsthman Millinery Company	St. Louis, Mo	160 70
Sherwienberg Pants Company	St. Louis, Mo	106 50
Gubin Clothing Company	St. Louis, Mo	154 00
[fol. 18] Goldman & Rosen Garment Co	St. Louis, Mo	101 50
Globe Mfg. Co	St. Louis, Mo	33 50
Total		$10,115 17

Exhibit "B" to Petition

Statement of Assets

1. Invoice of stock of goods on hand	$4,562 40
2. Paper Boxes	37 00
3. One Show case	140 00
4. Four show cases	120 00
5. 1 show case	20 00
6. One ribbon case	5 00
7. One mirror	7 50
8. One desk	10 00
9. One typewriter & check writer	60 00
10. One Register	300 00
11. One safe	40 00
12. One hat case	20 00
13. Four racks	20 00
Total	$5,351 90

Exhibit "C" to Petition

[fol. 19] Affidavit of Appraisers

We, the undersigned, P. O. Bynum, K. D. McNeely and Eli Dade, after first being duly sworn to appraise the stock of goods and fixtures in the possession of I. Pinkus, who is

in Dermott, Arkansas, according to its present value, make the following appraisements, to-wit:

	Value
1. The invoiced stock of goods at $4,562.40	$1,300 00
2. Paper Boxes, invoiced at $37 00	10 00
3. One show case invoiced at $140 00	50 00
4. Four show cases invoiced at $120 00	80 00
5. One show case invoiced at $20 00	5 00
6. One ribbon case invoiced at $5 00	5 00
7. One mirror invoiced at $7 50	5 00
8. One desk invoiced at $10 00	7 50
9. One typewriter & check writer invoiced at $60 00	25 00
10. One register invoiced at $300 00	100 00
11. One safe invoiced at $40 00	30 00
12. Four racks invoiced at $20 00	10 00
13. Two hat cases invoiced at $20 00	20 00
Total	$1,647 50

We, and each of us, further state that we are not interested in the above appraised stock in any manner and that we believe the appraised value of $— is a fair market price for the same.

(Signed) Eli Dante, Kay D. McNeely, P. O. Bynum.

Subscribed and sworn to before me on this the 19th day of Aug., 1926. John M. Gobden, Notary Public. My commission expires 3-27-26. (Seal.)

[fol. 20] In Chancery Court of Chicot County

No. 4273

[Title omitted]

Order Granting Insolvency and Appointing Receiver

Now on this the 24th day of August, 1925, this cause coming on to be heard in vacation, upon the complaint of the plaintiff, I. Pinkus, and the exhibits thereto, and the Court being well and sufficiently advised, doth find:

That the plaintiff has filed his petition alleging his insolvency, and praying that a receiver be appointed to take charge of his assets and liquidate the same for the purpose of paying his debts; that the plaintiff is a resident of Chicot County, Arkansas, and is insolvent; that it would be to the best interest of all parties that a receiver be appointed to take charge of his assets and liquidate the same for the purpose of paying his debts; the court further finds that the plaintiff filed a complete list of all his assets and his creditors with their address and amount due each; that this action is to the best interest of all parties hereto.

It is therefore by the court ordered, adjudged and decreed that the plaintiff, I. Pinkus, is declared insolvent, and that M. A. Threet is hereby appointed Receiver of this Court and he is hereby directed to take charge of all the property of the plaintiff and to immediately have him se- [fol. 21] lect his claimed exemptions and submit the same to this court for confirmation, and to take an inventory of any and all his property and liquidate the same for the purpose of paying his creditors; the Receiver is further directed to notify each creditor, by letter, of this action and direct them to make proper proof of their claim for allowance, with the necessary stipulation that they will participate in the proceeds in full satisfaction of their demands; that after the expiration of ninety days you will proceed to make the payments of the first dividend to the creditors as directed by law in such cases, that is to pay all costs herein first, and, second, to pay all salaries earned within the last past ninety days; third, to pay the claims of those who have duly filed their claims with the above stipulation, if enough funds are in your hands to pay the same, and lastly you are directed to pay any and all other claims of creditors, or so much as the funds in your hands will pay, all creditors of the same class receiving an equal percentage of the funds. You are further directed to keep proper vouchers of all payments and give full and complete report of your actions to this Court for further instructions; that the said Receiver is required to execute a good and sufficient bond in the sum of Fifteen Hundred Dollars as is required by law in such cases, and to otherwise qualify as the law directs before taking over said assets as aforementioned.

The Clerk of this court is directed to enter this order as is prescribed by law for such cases in vacation.

Done and ordered in Chambers in Dermott, Chicot County, Arkansas, on this the 24th day of August, 1925.

(Signed) E. G. Hammock, Chancellor.

[fol. 22] In Chancery Court of Chicot County

[Title omitted]

Affidavit of Receiver

I, M. A. Threet, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Arkansas, and I will, as Receiver of I. Pinkus faithfully, impartially, diligently and truly execute the trust reposed in me; so help me God.

(Signed) M. A. Threet.

Subscribed and sworn to before me this 24th day of August, 1925. (Signed) Henry Gaster, Notary Public. Com. expires Feb. 11, 1927. (Seal.)

[fol. 23] In Chancery Court of Chicot County

No. 4273

[Title omitted]

Receiver's Bond

We acknowledge ourselves to owe and to be indebted unto the State of Arkansas, for the benefit of all parties in interest, in the sum of Fifteen Hundred & no 100 ($1,500.00) Dollars for the payment whereof we hereby bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, conditioned, however, that if M. A. Threet who has been duly appointed as receiver by the Chicot Chancery Court in a cause therein pending wherein I. Pinkus is plaintiff and Ed Cannon, et al. are defendants, shall faithfully discharge the duties

incumbent upon him, as such receiver, and shall faithfully account for and pay into court, at such times as the court or law may prescribe or according to the order of the court, all moneys or assets which shall come into his hands, as such receiver, then this obligation shall become null and void, otherwise it shall remain in full force and effect.

In testimony whereof we have hereunto set our hands on this 24th day of August, 1925.

(Signed) M. A. Threet, Eli Dante, Kay D. McNeely, Ab Parrish, M. R. Hanchey.

Approved: E. G. Hammock, Chancellor. 8 26 25.

[fol. 24] In Chancery Court of Carver County

[Title omitted]

Receiver's Report

Comes M. A. Threet, heretofore appointed Receiver by this Court in the above matter, and reports as follows:

Your Receiver reports that, after taking charge of the assets of the above insolvent plaintiff, he found the above estate to be composed of the following described property, to-wit:

Stock of Dry Goods and Store Fixtures.

Your Receiver further reports that immediately upon his appointment he invoiced said stock of goods and fixtures and notified all the creditors of said insolvent of such appointment, advising them to file their accounts with him as Receiver.

That the stock of goods invoiced the sum of $4,076.00, and the fixtures invoiced the sum of $697.00, aggregating the sum of $4,773.00, which sum is the total of said estate.

That on the 1st day of September, 1925, your Receiver sold said stock of goods and fixtures to Sam Dessent, McGehee, Arkansas, for 55½ cents on the dollar of the invoice price, bringing a total sum of $2,650.01; that your Receiver paid to the said I. Pinkus, as his exemptions, the sum of $500.00 and that he has on hand now the sum of $2,150.00 to be distributed among the several creditors, after pay-

[fol. 25] ing all costs attending the administration of said estate.

Wherefore, your Receiver prays this court that the sale is approved and that the Receiver be instructed to place the said purchaser in possession of said store, and for all other proper relief.

(Signed) M. A. Threet.

[fol. 26] In Chancery Court of Carroll County

No. 4273

[Title omitted]

Decree Approving Receiver's Report—November 2, 1925

Now on this day is presented to the Court the report of M. A. Threet, Receiver for I. Pinkus, and the cause coming on for a hearing on the report of the Receiver, asking for the payment of all court costs, the payment of Receiver's fee and the distribution of the residue of the estate among the several creditors; and the court being well and sufficiently advised in the premises, doth find:

That the Receiver has on hand in cash money the sum of One Thousand Four Hundred and Thirty Nine & 32/100 (1,439.32) Dollars and has a note with good security in the sum of Seven Hundred Nineteen & 66/100 (719.66) Dollars due and payable on the first day of December, 1925; that after paying the court costs and receiver's fee the Receiver will have on hand the sum of One Thousand Nine Hundred & 00/100 (1,900.00) Dollars to be distributed among the creditors of the insolvent.

It is therefore ordered, adjudged and decreed and the Receiver is hereby ordered to pay all the costs attending said receivership out of such sums he may have in hand belonging to said estate; that the Receiver is hereby de-
[fol. 27] creed the sum of Two Hundred Fifty & 00/100 (250.00) Dollars for his services herein and is hereby ordered to pay same, and to distribute the residue of the estate among the several creditors, as their interest may appear and to make full report of his acts, in this matter, at the next term of this court.

[fol. 28] In Chancery Court of Chicot County, in Vacation

No. 4273

[Title omitted]

Decree Approving Receiver's Sale

Now on this the 3rd day of September, 1925, this cause being presented to the Hon. E. G. Hammock, Chancellor of the Second Chancery District of the State of Arkansas, in vacation, and the cause coming on to be heard on the report of the Receiver asking for the approval of sale, and the Court being well and sufficiently advised in the premises, doth find:

That the insolvent Estate is composed of the following described property, to-wit: Stock of Dry Goods and Store Fixtures.

That the stock of merchandise invoiced the sum of $4,076.00, and that the fixtures invoiced the sum of $697.00, making a total invoice of $4,773.00, and that the same was sold by the Receiver for the sum of $2,659.01; that the Receiver paid the sum of $500.00 to the said I. Pinkus as his exemptions.

It is therefore considered, ordered, adjudged and decreed that the sale of the above assets for the sum above set forth be and the same is hereby approved; that I. Pinkus is entitled to the sum of $500.00 as his exemptions, as his sole and separate property, free from the debts of his creditors and that the payment of same by the Receiver is hereby in all things approved, and that the Receiver is instructed [fol. 29] to hold the residue of said estate for the further orders of this court.

Done in vacation this the 3rd day of September, 1925.

(Signed) E. G. Hammock, Chancellor.

[fol. 30] In Chancery Court of Chicot County

No. 4273

[Title omitted]

Receiver's Report and Petition for Authority to Pay Costs, Receiver's Fee, and to Make Distribution of Assets

Comes M. A. Threet heretofore appointed Receiver by this Court in the above matter, and reports as follows:

Your Receiver reports that as a result of the sale of the assets of I. Pinkus held on the 1st day of September, 1925, he has collected in cash money the sum of one thousand four hundred thirty-nine & 32/100 ($1,439.32) dollars and has one promissory note due on the first day of December, 1925, signed by Sam Dessent, McGehee, Arkansas, and endorsed by two good men as surety, in the sum of seven hundred nineteen & 66/100 ($719.66) dollars, making a total sum of two thousand one hundred fifty-eight & 98/100 ($2,158.98) dollars to be distributed among the several creditors as their interest appear.

Wherefore, your Receiver prays that he be instructed to pay all court costs attending said receivership; that he be instructed to pay the Receiver's fee, the same to be fixed by this Court, and, after the expiration of ninety days from the date of sale hereof, he be instructed to distribute the residue of said estate among the several creditors as their interest may appear.

(Signed) M. A. Threet.

[fol. 31] Clerk's certificate to foregoing omitted in printing.

[File endorsement omitted.]

[fol. 32] Bond for costs, approved and filed November 25, 1925, omitted in printing.

[fol. 33] In Chancery Court of Chicot County

No. 4313

[Title omitted]

Demurrer of M. A. Threet—Filed December 28, 1925

Now comes M. A. Threet, Garnishee herein and M. A. Threet as Receiver herein, and demurs to the complaint of the plaintiff, International Shoe Company, for the following reasons, to wit:

1st. The plaintiff is without legal authority to garnishee him as Receiver.

2nd. The complaint shows upon its face that insufficient facts are stated to constitute a cause of action.

(Signed) Golden & Golden, Attorneys for Receiver.

[File endorsement omitted.]

[fol. 34] In Chancery Court of Chicot County

No. 4313

[Title omitted]

Demurrer of Sam Dessent—Filed December 28, 1925

Now comes Sam Dessent, Garnishee herein, and demurs to the complaint of the plaintiff, International Shoe Company, for the reason that said complaint shows upon its face that insufficient facts are stated to constitute a cause of action.

E. E. Hopson, Attorney for Garnishee, Sam Dessent.

[File endorsement omitted.]

[fol. 35] In Chancery Court of Chicot County

No. 4313

[Title omitted]

Demurrer of I. Pinkus—Filed December 28, 1925

Now comes the defendant, I. Pinkus, and demurs to the complaint of the plaintiff, International Shoe Company, for — reason that said complaint shows upon its face that insufficient facts are stated to constitute a cause of action.

(Signed) Golden & Golden, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 36] In Chancery Court of Chicot County

No. 4313

[Title omitted]

Answer—Filed December 28, 1925

Now comes Sam Dessent, Garnishee herein, and without waiving his motion and Demurrer heretofore filed, but now insisting on the same, files this, his answer to the complaint of the plaintiff International Shoe Company.

He denies that the plaintiff, International Shoe Company is a corporation legally organized, and denies that it is engaged in interstate commerce; denies that it is authorized to do business in the State of Arkansas. He denies that on the 24th day of August plaintiff obtained a judgment against I. Pinkus in the Chicot Common Pleas Court in the sum of $463.43 or in any other sum, together with interest and costs, or recovered any judgment in any sum on that or any other date, and that the same is now found of record at page 279 in Book Record "A" or in any other book; he denies that no part of said judgment has been paid; and denies that the Sheriff made a Nulla Bona return on the same.

He further denies that M. A. Threet in person or as Re-
[fol. 37] ceiver has any funds in his hands or property, belonging to defendant, I. Pinkus, which said funds were

acquired from the same or property belonging to the said I. Pinkus, of any funds belonging to the said defendant from any other source.

He specifically denies that he has any funds, property of any kind or nature belonging to the defendant, I. Pinkus, or to the creditors of the said I. Pinkus. He denies that Acts 48 (Page 115) of the General Assembly of the State of Arkansas for the year 1897, said Act being approved on June 26th, 1897, and being incorporated into and being Section 5885 to 5893, both inclusive, of Crawford & Moses' Digest of the State of Arkansas, was superseded or rendered void by the passage of the Federal Bankrupt Act on July 1st, 1898, or any other act at that or any other time passed by the Congress of the United States or any other body; he denies that the Act or Acts of the Chicot Chancery Court in declaring the said I. Pinkus a bankrupt or insolvent and appointing M. A. Threet receiver to take charge of his assets for the benefit of his creditors, are void and of no legal effect. He denies that he owes the said Pinkus any money or thing of whatever kind or nature and denies that either of the Banks, Garnishees herein has any funds belonging to defendant, I. Pinkus.

Having denied each and every allegation generally and specifically, Garnishee, Sam Dessent prays this Court that plaintiff's complaint be dismissed for want of equity and that he go hence with his costs, and for all general, special, [fol. 38] legal and equitable relief, and he will ever pray.

(Signed) E. E. Hopson, Attorney for Sam Dessent.

[File endorsement omitted.]

[fol. 39] In Chancery Court of Chicot County

No. 4313

[Title omitted]

Answer of M. A. Threet to Interrogatories. Filed December 2, 1925

Comes M. A. Threet, Garnishee herein, and files this as his answers to the interrogatories propounded to him by the plaintiff.

First. I was not indebted to I. Pinkus after date of summons herein, in any amount.

Second. I did not have in my hands, after date of summons herein, any goods, merchandise, chattels, moneys, choses in action, evidences of indebtedness or effects or any other kind of property in which I. Pinkus owned or in which he has an interest.

Third. I have not, in my possession now, nor have had in my possession any moneys arising from the sale of the stock of merchandise and fixtures belonging to I. Pinkus, which sale was made and had under orders of the Circuit Chancery Court.

Fourth. No.

Fifth. No.

[fol. 40] *Duly sworn to by M. A. Threet. Jurat omitted as pending.*

[File endorsement omitted.]

[fol. 41] In Chancery Court of Union County

No. 4313

[Title omitted]

Answer of M. A. Threet, as Receiver, to Interrogatories
Filed December 2, 1925

Comes M. A. Threet as Receiver, Garnishee herein, and files this as his answers to the interrogatories propounded to him by the plaintiff:

First. I was not indebted to I. Pinkus after date of summons herein, in any amount.

Second. I did not have in my possession, after date of summons herein, any goods, merchandise, chattels, moneys, choses in action, evidences of indebtedness or effects or any

other kind of property in which I. Pinkus owns or has an interest.

Third. I have deposited to my credit in the Exchange Bank & Trust Company, Dermott, Arkansas, the sum of one thousand nine hundred eight & 98 100 ($1,908.98) dollars, this amount was realized from the sale of the store fixtures and stock of goods belonging to I. Pinkus, Dermott, Arkansas, which sale was held under and by orders of the Chicot Chancery Court.

Fourth. None.

[fol. 42] *Duly sworn to by M. A. Threet. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 43] In Chancery Court of Chicot County

No. 4313

[Title omitted]

Answer of Exchange Bank & Trust Company to Interrogatories—Filed December 2, 1925

Comes the Exchange Bank & Trust Company, by its Cashier, S. G. Lockhart, and files this as its answers to the interrogatories propounded to it by the plaintiff.

First. I was not indebted to I. Pinkus after date of summons herein, in any amount.

Second. I did not have on the date, or after the date of summons herein, any goods, merchandise, chattels, moneys, choses in action, evidences of indebtedness or effects or any other kind of property in which I. Pinkus owns or has an interest.

Third. I have not in my possession on the date of summons herein, nor after said date of summons any moneys arising from the sale of the stock of merchandise and store fixtures belonging to I. Pinkus.

Fourth. I have no moneys in my possession to the credit of M. A. Threet, individually, derived from the sale of any property belonging to L. Pinkus, or in which he has had an interest; but I have the sum of one thousand nine hun- [fol. 44] dred eight & 98 100 ($1,908.98) dollars to the credit of M. A. Threet, Receiver.

Fifth. None.

Duly sworn to by S. G. Lockhart. Jurat omitted in printing.

[File endorsement omitted.]

[fols. 45 & 46] Supersedeas bond on appeal approved; omitted in printing.

[fol. 47] In Chancery Court of Choctaw County

No. 4313

[Title omitted]

Decree—January 29, 1926

Now on this 29th day of January, 1926, the same being a day of the adjourned term of the regular November, 1925 term of this court, comes the plaintiff, International Shoe Company, by its attorneys, Street & Burnside, and come M. A. Threet, individually and as receiver, and the de- fendant, L. Pinkus, by their attorneys, Golden & Golden, Sam Dessent, garnishee, by his attorney, E. E. Hobson and J. Carp, one of the defendant creditors, by his attorney, S. R. Scott, and all parties announcing ready for hearing upon the several demurrers to the complaint, heretofore filed herein, the said cause is submitted to the court upon said complaint and the demurrers thereto and, having heard argument of counsel pro and con, and, being well and sufficiently advised in the premises, the court doth find:

That since the institution of this suit, M. A. Threet has been removed as receiver and George Franklin substituted in his place and stead, and, by consent of all parties, the

said George Franklin is made party hereto in the place of the said Threet.

[fol. 48] The Court further finds that the garnishees, Bank of Dermott, Exchange Bank & Trust Company, and other garnishees have filed answers showing the property in their hands.

And the court being well and sufficiently advised in the premises, doth sustain said demurrers, being of opinion that this court had jurisdiction of the parties and of the subject matter of the suit attacked in said complaint.

It is therefore considered, ordered, adjudged and decreed that the said demurrers to the complaint herein be and the same are hereby sustained and, The International Shoe Company electing to stand upon its said complaint and refusing to plead further, it is considered, ordered, adjudged and decreed that the said complaint be and the same is hereby dismissed, from which order and judgment sustaining said demurrers and dismissing its complaint, the plaintiff, International Shoe Company, prays an appeal to the Supreme Court, which is granted.

(Signed) E. G. Hammock, Chancellor.

[fol. 49] Cost bill omitted in printing.

[fols. 50 & 51] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 52] [Caption omitted]

[fol. 53] In Supreme Court of Arkansas

JUDGMENT—March 21, 1927

This cause came on to be heard upon the transcript of the record of the Chancery Court of Chicot County, and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and decree of said Chancery Court in this cause.

It is therefore ordered and decreed by the Court that the decree of said Chancery Court in this cause rendered be, and the same is hereby, in all things, affirmed with costs.

It is further ordered and decreed that said appellees recover of said appellant and of United States Fidelity & Guaranty Company, surety in the supersedeas bond filed in this cause, all their costs in this Court and the court below in this cause expended, and have execution thereof.

[fol. 54] In Supreme Court of Arkansas

Opinion. March 21, 1927

Mehaffey, J.:

The appellant filed its complaint in the chancery court of Chicot county alleging that it was a corporation legally organized and doing an interstate business, that its transaction with Pinkus constituted interstate commerce, and that it was authorized to maintain the suit; that the defendant I. Pinkus and the garnishees, M. A. Threet, M. A. Threet as Receiver, Sam Dessent, Bank of Dermott and Exchange Bank & Trust Company were all citizens and residents of the State of Arkansas, the last two being banking corporations. It alleged that on the 24th day of August, 1925, that it obtained judgment against I. Pinkus in the common pleas court of Chicot county for $465.43 with interest from December 9, 1924, at the rate of 6% per annum and for all costs. That no part of said judgment has been paid, that an execution was issued against the property of Pinkus and the sheriff reported that he was unable to find any property of the defendant upon which to levy. It further alleged that the garnishee, M. A. Threet and M. A. Threet as Receiver, has in his possession and control said monies, property of defendant Pinkus, acquired by the sale of merchandise and fixtures belonging to Pinkus under certain proceedings now pending in the Chicot chancery court wherein I. Pinkus was plaintiff and [fol. 55] Ed Cannon and other creditors of the said Pinkus, including the plaintiff herein, are defendants, instituted under and by virtue of Act 48 of the General Assembly for

1897, being now sections 5885 to 5893 inclusive of Crawford & Moses' Digest. That all proceedings of the chancery court under the State statute are void because the insolvency laws of the State were suspended by the bankrupt act; that the monies now held by Threet, individually or as receiver, belong to I. Pinkus and are subject to the payment of judgment in favor of plaintiff; that the said Threet individually and as receiver has said monies deposited in one or both of the banks named as garnishees; that Sam Dessent owes Pinkus certain sums of money arising from sale and purchase of merchandise and fixtures.

Plaintiff attached interrogatories to be answered under oath by each of the garnishees. Plaintiff attaches a copy of the judgment of the Common Pleas Court, the return of the sheriff and the petition of defendant, Pinkus, to be declared an insolvent and for the appointment of a receiver; also shows the exhibits attached to the petition. Plaintiff also attaches as an exhibit, the decree and orders of the chancery court. Plaintiff also exhibits the transcripts of the answer of Threet as receiver, showing the amount realized from the sale of the store and fixtures belonging to I. Pinkus. Exchange Bank & Trust Company also filed answer to interrogatories which were exhibited with plaintiff's complaint. Defendants filed demurrers to plaintiff's complaint and the court sustained the demurrers and dismissed plaintiff's complaint.

[fol. 56] It is contended by the appellant, first, that the Federal bankrupt act of 1898 superseded and suspended the insolvency laws of the State of Arkansas, in so far as the instant case is concerned, and that the proceedings attempted to be had thereunder in this case, are coram non judice and void.

Second. That, if the chancery court had jurisdiction to declare Pinkus a bankrupt, it could not bind appellant, a nonresident of the State, in such proceeding.

The Arkansas statute, with reference to insolvent debtors, simply authorizes a debtor to go in the chancery court and ask for the appointment of a receiver to take charge of his property and distribute the same among his creditors. The effect of this is the same as if the debtor had made an assignment of his property for the benefit of his creditors and this court has repeatedly held that a debtor

may make an assignment of all his property but that he cannot reserve any to himself, except, of course, the exemptions he is allowed by the constitution.

This court, however, has said: "It is no longer questioned that the national bankruptcy law brooks no interference with its operation, and supersedes all State insolvency laws in conflict with it or that provide the same relief.

But it is also true that such Federal bankruptcy law does not repeal or abrogate State laws in conflict, but only supersedes and suspends their operation for the time being upon persons or cases within the purview of the Federal statute. The National bankruptcy act does not apply to [fol. 57] all persons and all corporations. * * * It is true that the appointment of a receiver by the State court for the insolvent company constituted an act of bankruptcy within the meaning of section 3a (4) of the bankruptcy act, which could have been taken advantage of by the creditors of said company by involuntary proceedings at any time within the four months thereafter, and which was done on the 17th day of January, 1910." Robert Cotton Oil Co. v. F. E. Morse & Co. 97 Ark. 513.

The debtor in the case at bar could have filed his petition in voluntary bankruptcy and the Federal court would have ordered a distribution of his property among his creditors just as was directed by the chancery court. But there is no law requiring him to go into voluntary bankruptcy and, if he had been required by law or any other force to do so, his bankruptcy would not have been voluntary. Where the debtor's assets are small it is frequently very much better for his creditors to have him either make an assignment for the benefit of his creditors or to have a receiver appointed by the chancery court to whom all of his property shall be turned over to be distributed among his creditors, than it would be for him to go into voluntary bankruptcy. When he filed his petition for the appointment of a receiver in the chancery court he committed an act of bankruptcy under the Federal bankruptcy law, but in order for the bankruptcy court to get jurisdiction, the Federal law requires certain procedure. There must be a petition by three or more creditors who have provable claims against the debtor, which amount in the aggregate

[fol. 58] to $500 or over, or if all the creditors are less than 12, then one creditor may file petition against the debtor. The filing a petition in the chancery court for the appointment of a receiver by an insolvent debtor, or the making of an assignment for the benefit of his creditors, is an act of bankruptcy, but an act of bankruptcy of itself does not put one in the Federal court. There must either be a voluntary petition by the debtor or a petition by the creditors as provided by law. If the creditors had filed a petition against the debtor in the bankrupt court, the bankrupt court would have had jurisdiction and the State court could have acted no further, but the Federal bankrupt act does not abrogate or repeal the insolvency laws of a State even where the insolvency laws are in conflict with the bankruptcy act. But in such case, it only suspends the State statute, but, notwithstanding the bankrupt act, State statutes that are not in conflict therewith, are still operative and it has been held both by this court and by the Federal court, even where the State statute is in conflict with the Federal statute, the bankruptcy act suspends the operation only upon persons or cases within the purview of the Federal statute. Unless the creditors take action for the purpose of giving the bankrupt court jurisdiction, the proceeding in the State court is valid. The statute does not prohibit creditors from filing petition in bankruptcy and does not require them to release or relinquish their debt or claim against the debtor. They may file their claim and participate in the proceeds or they may decline to [fol. 59] do so and still have their judgment or claim against the debtor. Nothing that the debtor could do could defeat the right of the creditors to invoke the bankruptcy law or have the bankrupt estate administered in the Federal court. The bankruptcy law is paramount and the jurisdiction of the Federal court in bankruptcy, when properly invoked in the administration of the affairs of insolvent persons or corporations, is exclusive. But the bankruptcy court does not take jurisdiction unless a request to do so is made by some creditor or the debtor. There are doubtless many insolvent persons who do not wish to go into voluntary bankruptcy and whose situation is such that the creditors could not put them into involuntary bankruptcy. But in all cases where the jurisdiction of the Federal court

in bankruptcy is properly invoked, all procedure thereafter in the State court must cease. If there were no statutes on insolvency an insolvent debtor could either make an assignment, turn over all his property for the benefit of his creditors or could apply to the chancery court for the appointment of a receiver to take charge of all of his property.

The appellant next insists that even if the chancery court had jurisdiction to declare Pinxus a bankrupt, it could not bind the appellant, a non-resident of the State. It not only could not bind a non-resident, but it could not bind a resident creditor. No creditors are prevented from invoking the jurisdiction of the bankrupt court whether they are residents or non-residents, and no one can get a release from his debts in any court other than the bankrupt court, [fol. 60] except by the voluntary act of the creditor. The creditor may or may not release or relinquish his claim. If he wishes to participate in the proceeds or the assets of the debtor he may be required to accept his pro rata part in full payment, but he is not required to do this. He can decline to do so and pursue any remedy he may have, including an application or petition in the bankrupt court, but if he does not wish to pursue this remedy, then the debtor may, through the chancery court, do what he might do by making a general assignment and, although either constitutes an act of bankruptcy, it will be binding until the jurisdiction of the Federal court is properly invoked. Simply because an insolvent debtor may go into the bankruptcy court or may be forced to go by a petition of creditors does not prevent him from disposing of all of his property for the benefit of all of his creditors unless the jurisdiction of the bankrupt court is properly invoked and we therefore conclude that unless and until the jurisdiction of the bankrupt court is properly invoked the voluntary agreement of the creditors is binding. It follows from what we have said that the decree of the chancery court must be affirmed.

[fol. 61] IN SUPREME COURT OF ARKANSAS

MINUTE ENTRY—April 11, 1927

On motion, the appellees are allowed one week from date in which to prepare and file their brief in response to the petition for rehearing herein.

IN SUPREME COURT OF ARKANSAS

MINUTE ENTRY—April 18, 1927

The petition heretofore filed in this cause now being called, is submitted with the response and briefs filed, and is by the Court taken under advisement.

[fols. 62-64] Motion for rehearing, covering three pages, filed March 29, 1927, omitted from this print. It was denied and nothing more by order April 25, 1927.

[fol. 65] IN SUPREME COURT OF ARKANSAS

ORDER OVERRULING MOTION FOR REHEARING—April 25, 1927

Being fully advised, the petition for rehearing filed herein, is by the Court overruled.

[fol. 66] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 67] In Supreme Court of Arkansas

No. 9723

International Shoe Company, Appellant,

v.

I. Pinkus et al., Appellees

Assignments of Error. Filed June 30, 1927

Now comes the appellant, International Shoe Company, and files herewith its petition for a writ of error and says that in the record, proceedings, decision and final judgment, of the Supreme Court of the State of Arkansas, in the above entitled cause, being that of International Shoe Company v. I. Pinkus, George Franklin, Sam Dessent, Bank of Dermott and Exchange Bank & Trust Company, No. 9723, there is manifest error in this, to-wit:

First. The Supreme Court of Arkansas erred in holding and declaring that the insolvency laws of the State of Arkansas, embraced in Act 48 of the Acts of the General Assembly of the State of Arkansas in the year 1897, being now sections 5885 to 5893, both inclusive, of Crawford & Moses Digest of the laws of the State of Arkansas, are now in full force and effect, and that same were not suspended and superseded by the Acts of Congress relating to bankruptcy, passed in 1898.

Second. The Supreme Court of Arkansas erred in holding that, under the insolvency laws of Arkansas, embraced in sections 5885 to 5893, both inclusive, of Crawford & Moses Digest of the laws of the State of Arkansas, the chancery court of Chicot County had jurisdiction and power to adjudge I. Pinkus, a merchant and, as such, within the purview of the National Bankruptcy Act of 1898, an insolvent, appoint a receiver for his estate, make orders for the distribution thereof and provide for his discharge from his debts, because the insolvency laws of Arkansas were superseded and suspended by the passage of the Bankruptcy Act by the Congress of the United States in 1898, and said

[fol. 68] judgment and orders of the chancery court of Chicot County were and are coram non judice and void.

Third. The Supreme Court of Arkansas erred in holding and deciding that the proceedings in the state court, under the state insolvency act, sections 5885 to 5893, both inclusive, of Crawford & Moses Digest of the laws of the State of Arkansas, are valid, unless the creditors take action for the purpose of giving the Federal Bankrupt Court jurisdiction, because the insolvency laws of this state were completely superseded by the Bankruptcy Act of 1898, and it cannot be that a state court has power to discharge a bankrupt when its proceedings are not interfered with, but loses such power when the Bankrupt Court takes over the administration of the estate. The state statute cannot be in force under one set of circumstances and not in force under different conditions.

Fourth. The Supreme Court of Arkansas erred in holding and deciding that the adjudication of I. Pinkus as an insolvent under the insolvency laws of Arkansas, by the chancery court of Chicot County, and the orders of such court for the administration of his estate thereunder, were in effect a general assignment and valid, unless the said I. Pinkus or his creditors invoked the jurisdiction of the Bankrupt Court, under the Acts of Congress relating to bankruptcy, because any law which provides for an adjudication of insolvency and a discharge or release of the debtor upon the administration of his estate, is a bankrupt law or act, and not a general assignment, and was suspended and superseded by the National Bankruptcy Act of 1898.

For which errors, the appellant, International Shoe Company, prays that the judgment of the Supreme Court of the State of Arkansas, which became final upon the denial of appellant's petition for rehearing on the 25th day of April, 1927, be reversed, with costs, and a judgment rendered in favor of the appellant for the amount of its claim and ordered paid out of the funds in the hands of George Franklin, substituted receiver of the Chicot County Chancery Court, and garnishee herein, and appellant further prays judgment for all of its costs in this behalf expended against

[fol. 69] the said George Franklin, substituted receiver, and for general relief in the premises.

J. D. Williamson, O. C. Burnside, W. G. Strott, Attorneys for Appellant, International Shoe Company.

[File endorsement omitted.]

[fol. 70] In Supreme Court of Arkansas

[Title omitted]

Petition for Writ of Error and Order Allowing Same. Filed June 30, 1927

To the Honorable Jesse C. Hart, Chief Justice of the Supreme Court of Arkansas:

Your petitioner, International Shoe Company, a corporation, appellant in the above entitled cause, presents this its petition for a writ of error, and hereby sets forth, that on the 21st day of March, A. D. 1927, the Supreme Court of the State of Arkansas, made and rendered a decision and judgment herein in favor of the defendants or appellees, I. Pinkus, George Franklin, Sam Dessent, Bank of Dermott and Exchange Bank & Trust Company, dismissing plaintiff's bill for want of equity, holding that the insolvency laws of the State of Arkansas, being sections 5885 to 5902, both inclusive, of Crawford & Moses Digest of the statute laws of said State of Arkansas, were not suspended by the passage of the National bankruptcy Act of 1898, but are now in full force and effect, and the estate of an insolvent debtor (subject to be adjudicated a bankrupt under the National Bankruptcy Act) could be administered in said state insolvency proceeding, his estate distributed, and he be discharged from his debts, unless said insolvent be adjudicated a bankrupt under and by virtue of the Act of Congress of the United States relating to bankruptcy, and on the 25th day of April, A. D. 1927, the Supreme Court of Arkansas, in term time, denied the petition of the Inter-

national Shoe Company for rehearing herein, which said petition was filed and considered within the time prescribed by law, thereby making its decision and judgment final as of said 25th day of April, A. D. 1927, in which final order and judgment and the proceedings had prior thereto in this [fol. 71] case, certain errors were committed to the prejudice of International Shoe Company, all of which will more in detail appear from the assignment of errors, which is filed with this petition.

That the said Supreme Court of the State of Arkansas is the highest court of said State of Arkansas, in which a decision in this suit and this matter could be had.

Wherefore, International Shoe Company, a corporation, petitions and prays that a writ of error from the Supreme Court of the United States may issue in this behalf to the Supreme Court of the State of Arkansas, for the correction of errors so complained of, and that a transcript of record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

J. D. Williamson, O. A. Barnside, W. G. Sievett, Attorneys for International Shoe Company, Appellant and Plaintiff in Error.

Let the writ of error issue upon the execution of a bond by the International Shoe Company, appellant, in the sum of fifteen hundred dollars, in favor of appellees, I. Pinkus, George Franklin, Sam Dessert, Bank of Dermott and Exchange Bank & Trust Company, which bond, when approved, to act as a supersedeas.

Dated the 30th day of June, 1927.

Jesse C. Hart, Chief Justice of Supreme Court of Arkansas.

[File endorsement omitted.]

[fol. 72] Bond on writ of error for $1,500.00, approved and filed June 30, 1927, omitted in printing.

[fol. 73] IN SUPREME COURT OF ARKANSAS

[Title omitted]

WRIT OF ERROR. Filed June 30, 1927

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea in the cause of International Shoe Company, a corporation, appellant, v. I. Pinkus, George Franklin, Sam Bernett, Bank of Dermott, a corporation, and Exchange Bank & Trust Company, a corporation, appellees, No. 9723, which is in said Supreme Court of Arkansas before you, being the highest court of law or equity, in said state wherein a decision could be had in said cause, judgment having been rendered March 21st, 1927, which said judgment became final on April 25th, 1927, when appellant's motion for rehearing was denied, which said motion for rehearing was filed and considered within the time prescribed by law, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or where was drawn in question the validity of a statute of, or an authority exercised under, a state, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity, a manifest error hath happened to the great damage of appellant, International Shoe Company, a corporation, as by its complaint appears.

[fol. 74] We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, distinctly and openly under your seal, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ,

so that you have the same at Washington, D. C. within thirty days from the date hereof, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, according to the laws and custom of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, this 30th day of June, 1927.

Issued at office in Little Rock, Arkansas, with the seal of the District Court of the United States, for the Western Division of the Eastern District of Arkansas.

Sid B. Redding, Clerk of the United States District Court for the Eastern District of Arkansas, by H. P. Feild, D. C. (The Seal of the District Court, Western Division, U. S. A., Eastern District of Arkansas.)

Allowed by Jesse C. Hart, Chief Justice of Supreme Court of Arkansas.

[File endorsement omitted.]

[fol. 75] Certificate of lodgment omitted in printing.

[fol. 76] Citation, in usual form, showing service on I. Pinkus et al., filed July 8, 1927, omitted in printing.

[fol. 77] Return to writ of error omitted in printing.

[fol. 78] In Supreme Court of the United States

Statement of Points to be Relied Upon and Stipulation to Print Entire Record—Filed July 26, 1927

Comes the plaintiff in error, International Shoe Company, and states that the points on which it intends to rely in the consideration of the above cause are as follows:

First. The Supreme Court of Arkansas erred in holding and declaring that the insolvency laws of the State of Arkansas, embraced in Act 48 of the Acts of the General Assembly of the State of Arkansas in the year 1887, being now sections 5885 to 5893, both inclusive, of Crawford & Moses Digest of the laws of the State of Arkansas, are now in full force and effect, and that same were not superseded and superseded by the Acts of Congress relating to bankruptcy, passed in 1898.

Second. The Supreme Court of Arkansas erred in holding that, under the insolvency laws of Arkansas, embraced in sections 5885 to 5893, both inclusive, of Crawford & Moses Digest of the laws of the State of Arkansas, the chancery court of Chicot County had jurisdiction and power to adjudge I. Pinkus, a merchant, and, as such, within the purview of the National Bankruptcy Act of 1898, an insolvent, appoint a receiver for his estate, make orders for the distribution thereof and provide for his discharge from his debts, because the insolvency laws of Arkansas were suspended and superseded by the passage of the Bankruptcy Act by the Congress of the United States in 1898, and said judgment and orders of the chancery court [fol. 79] of Chicot County were and are coram non judice and void.

Third. The Supreme Court of Arkansas erred in holding and deciding that the proceedings in the state court under the state insolvency act, sections 5885 to 5893, both inclusive, of Crawford & Moses Digest of the laws of the State of Arkansas, are valid, unless the creditors take action for the purpose of giving the Federal Bankrupt Court jurisdiction, because the insolvency laws of this state were completely superseded by the Bankruptcy Act

of 1898, and it cannot be that a state court has power to discharge a bankrupt when its proceedings are not interfered with but loses such power when the Bankrupt Court takes over the administration of the estate. The state statute cannot be in force under one set of circumstances and not in force under different conditions.

Fourth. The Supreme Court of Arkansas erred in holding and deciding that the adjudication of I. Pinkus as an insolvent under the insolvency laws of Arkansas, by the chancery court of Chicot County, and the orders of such court for the administration of his estate thereunder, were in effect a general assignment and valid, unless the said I. Pinkus or his creditors invoked the jurisdiction of the Bankrupt Court, under the Acts of Congress relating to bankruptcy, because any law which provides for an adjudication of insolvency and a discharge or release of the debtor upon the administration of his estate, is a bankrupt law or act, and not a general assignment, and was suspended and superseded by the National Bankruptcy Act of 1898.

J. D. Williamson, O. C. Burnside, W. G. Streett, Attorneys for International Shoe Company, Plaintiff in Error.

Stipulation

It is agreed by all parties hereto that, for a proper consideration of the above styled cause, it is necessary that the entire record herein be printed in full, and the clerk of this [fols. 8487] court is hereby requested to cause to be printed in its entirety said record.

J. D. Williamson, O. C. Burnside, W. G. Streett, Attorneys for International Shoe Company, Plaintiff in Error. Lamar Williamson, Attorney for I. Pinkus, George Franklin, Sam Dessent, Bank of Dermott, and Exchange Bank & Trust Company, Defendants in Error.

I, Lamar Williamson, attorney in this court for the defendants in error, I. Pinkus, George Franklin, Sam Dessent, Bank of Dermott and Exchange Bank & Trust Company, on behalf of said defendants in error, hereby waive service

of the within, being Statement of Points on which plaintiff in error intends to rely.

Lamar Williamson, Attorney for Defendants in Error, I. Pinkus, George Franklin, Sam Dessent, Bank of Dermott, and Exchange Bank & Trust Company. Williamson & Williamson, Attys., Monticello, Arkansas.

[fol. 88] [File endorsement omitted.]

Endorsed on cover: File No. 32,853. Arkansas Supreme Court. Term No. 401. International Shoe Company, plaintiff in error, vs. I. Pinkus, George Franklin, Sam Dessent, et al. Filed July 26th, 1927. File No. 32,853.

Office Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1927.

INTERNATIONAL SHOE COMPANY,
Plaintiff in Error,
v.
I. PINKUS, GEORGE FRANKLIN, SAM DESSENT et al.,
Defendants in Error.

No. ~~401~~. 12

On Writ of Error to the Supreme Court of the State of Arkansas.

BRIEF FOR PLAINTIFF IN ERROR.

J. D. WILLIAMSON, of St. Louis, Mo.,
O. C. BURNSIDE, of Lake Village, Ark.,
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1927.

INTERNATIONAL SHOE COMPANY,
Plaintiff in Error,
v.
I. PINKUS, GEORGE FRANKLIN, SAM DESSENT et al.,
Defendants in Error.

No. 401.

On Writ of Error to the Supreme Court of the State of Arkansas.

BRIEF FOR PLAINTIFF IN ERROR.

To the Honorable Judges of Said Court:

This case is before this Court on writ of error from the judgment and decision of the Supreme Court of Arkansas, reported under the title of International Shoe Company v. I. Pinkus et al., 229 S. W., page 996 (opinion not published in official state reports).

GROUNDS OF JURISDICTION.

The jurisdiction of this Court is invoked to review the decision of the Supreme Court of Arkansas as set forth in its opinion rendered March 21, 1927 (Rec., p. 26), under Section 237-a of the Judicial Code as amended. The validity of the Arkansas Insolvency Statute was attacked in the lower court and in the Supreme Court of Arkansas on the ground that under the Constitution of the United States, after the passage of the National Bankruptcy Act in 1898, the Arkansas Insolvency Statute was suspended and superseded. The Supreme Court of Arkansas held that such insolvency statute was valid and not superseded or suspended by the National Bankruptcy Act, unless a bankruptcy proceeding be instituted against the debtor within four months of his invoking the jurisdiction of the state Chancery Court. The decision by the Supreme Court of Arkansas was a final decree of a state court where the validity of a state statute on the ground of its being repugnant to the Constitution and laws of the United States was drawn into question, and the decision of the state court of Arkansas was in favor of its validity.

STATEMENT OF THE CASE.

On August 24, 1925, in the case of International Shoe Company, plaintiff, v. I. Pinkus, defendant, in the Common Pleas Court of Chicot County, Arkansas, the plaintiff obtained judgment against the defendant for merchandise furnished defendant in his dry goods business in the sum of $463.43, together with interest thereon from December 9, 1924, at 6 per cent per annum and all costs of said suit, said judgment reciting, among other things, that if same is not satisfied by November 15, 1925, execution might issue thereon (Rec., pp. 5-6).

On August 24, 1925, the same date said judgment was rendered, Pinkus filed in the Chancery Court of Chicot County, Arkansas, his petition alleging his insolvency and praying, among other things, that he be adjudged an insolvent, for the appointment of a receiver to take charge of his stock of merchandise and store fixtures and to sell the same, and, after allowing him his constitutional exemptions and paying the court costs, to distribute the residue among his several creditors agreeable to the statute laws of the State of Arkansas (hereinafter quoted), after notice to said creditors and directing them to file with the Court their stipulations agreeing to accept their proportionate part of the assets of the bankrupt in full settlement of all demands and acquit him from further liability (Rec., pp. 8-9).

On the same day of the filing of said petition by the said Pinkus the Chancery Court entered an order decreeing Pinkus an insolvent, appointing and directing M. A. Threet as Receiver to make an inventory of insolvent's property and liquidate same for the purpose of paying his creditors, and directing said Receiver to notify the creditors by letter of said action and direct them to make proper proof of their claims for allowance, with the necessary stipulation that such creditors would participate in the proceeds in full satisfaction of their demands, and, after ninety days, to pay out of the proceeds of insolvent's estate the $500 allowed him as his constitutional exemptions, then to pay all court costs of the proceeding, next to pay the salaries of insolvent's employes earned within the last ninety days, next to pay the claims of those creditors filing the stipulation agreeing to accept the proportionate amount paid them, if a sufficient amount of money was not available to pay them in full in complete settlement of their claims and acquit insolvent of further liability; and, lastly, if there happened to be anything left, to pay those creditors refusing to file such stipulation (Rec., pp. 12 13).

Threet, after qualifying as Receiver, gave notice to the several creditors, directing them to file their accounts, duly proved, with the stipulation agreeing to accept the proportionate amount paid them in complete settlement of their claims, said the stock of merchandise and store fixtures in one Sam Dweck (one of the defendants in er

ror) for $2,659.01, and, after paying Pinkus his $500 exemption, reported to the Court that he had on hand for distribution the sum of $2,159.00, out of which said sum the Court allowed the said Threet $250 as his receiver's fee (Rec., pp. 15-16).

The International Shoe Company, one of the creditors of the insolvent (called Peters Shoe Company in the list of creditors) refused to become a party to said insolvency proceedings, in that it declined to file with the Court the stipulation agreeing to accept what was paid it, if less than the amount of its account, in full satisfaction thereof and acquit insolvent of further liability, but it did, on November 18th, 1925, cause to be issued, in conformity with its judgment obtained against Pinkus, an execution and placed same in the hands of the Sheriff of Chicot County; which officer reported that he was unable to find any property belonging to Pinkus upon which to levy and returned said execution nulla bona (Rec., pp. 6-7).

Whereupon, the said shoe company did, on the 19th day of November, 1925, file its petition in the Chancery Court of Chicot County, Arkansas, agreeable to Sections 4366, 4369 and 4371 of Crawford & Moses' Digest of the Statute Laws of the State of Arkansas, and which will be hereinafter quoted, alleging, among other things, the existence of its judgment against Pinkus, the execution and nulla bona return thereon, the illegality of all of said insolvency proceedings in the case of I. Pinkus v. Ed Canon and his other creditors; particularly alleging that all

of the said proceedings of the said Chicot Chancery Court under and by virtue of said state statutes are void and of no legal effect, inasmuch as the insolvency statutes of the State of Arkansas were suspended and held in abeyance by the passage of the Bankrupt Act of Congress of July 1st, 1898, and that the said Threet was holding said moneys, the property of the said Pinkus, without legal authority, and sought to impound such funds to the payment of its said judgment, in that a garnishment was issued against Threet and several banks (Rec., pp. 1-18). Threet and the Exchange Bank and Trust Company, two of the garnishees, answered the interrogatories propounded by petitioner and showed on hand the sum of $1,908.98, proceeds derived from the sale of insolvent's assets (Rec., pp. 23-24). Pinkus, Threet and Dessent filed their separate special demurrers to said petition (Rec., pp. 19-20).

After the institution of said insolvency proceedings by Pinkus, and before the sustaining of the demurrers to the petition filed by plaintiff in error, the said Threet was removed as Receiver and one George Franklin appointed in his place and stead (Rec., pp. 24-25).

On final hearing the Chancery Court sustained said demurrers, holding that it had jurisdiction of the parties and of the subject matter of the suit attacked in said petition, and the shoe company electing to stand upon its said petition and refusing to plead further, said petition was by the Court dismissed; from which judgment sustaining said

demurrers and dismissing its complaint it prayed and was granted an appeal to the Supreme Court of the State of Arkansas (Rec., pp. 24-25).

The Supreme Court of Arkansas did, on March 21st, 1927, render its judgment affirming the decision of the lower court holding that the Arkansas Insolvency Act was in full force and effect, and that it was not superseded nor suspended by the National Bankruptcy Act, unless a petition in bankruptcy should be filed in the United States District Court within four months of the filing of the insolvency proceeding in the Chancery Court of Arkansas and an adjudication of bankruptcy of the debtor had in such court; that unless a bankruptcy proceeding under the Bankruptcy Act was had that the Chancery Court should proceed to enforce the State Insolvency Act and administer the insolvent's estate in accordance therewith (Rec., pp. 26 to 30). That said decision of the Supreme Court became final on the denial of appellant's motion for rehearing on April 25th, 1927 (Rec., p. 31).

ASSIGNMENTS OF ERROR INTENDED TO BE URGED.

First. That the Supreme Court of Arkansas erred in holding and declaring that the insolvency laws of the State of Arkansas, embraced in Act 48 of the Acts of the General Assembly of the State of Arkansas in the year 1897, being now Sections 5885 to 5893, both inclusive, of Crawford & Moses' Digest of the Laws of said state, are now in full force and effect, and that same were not, in so far as the instant case is concerned, suspended and superseded by the acts of Congress relating to bankruptcy, passed in 1898.

Second. That the Supreme Court of Arkansas erred in holding that under the said insolvency statute the Chancery Court of Chicot County had jurisdiction and power to adjudge Pinkus a merchant, and, as such, within the purview of the National Bankruptcy Act of 1898, an insolvent, appoint a Receiver for his estate, make orders for the distribution thereof and provide for his discharge from his debts.

Third. That said Supreme Court erred in holding and deciding that the proceedings in the state court, under said insolvency statute, are valid unless the creditors take action for the purpose of giving the federal bankrupt court jurisdiction.

Fourth. That said Supreme Court erred in holding and deciding that the adjudication of Pinkus as an insolvent under said insolvency statutes, by the Chancery Court of Chicot County, and the orders of such Court for the administration of his estate thereunder, were in effect a general assignment and valid unless the said Pinkus or his creditors invoked the jurisdiction of the federal bankupt court under the acts of Congress relating to bankruptcy, because any law which provides for an adjudication of insolvency and a discharge or release of the debtor upon the administration of his estate is a bankrupt law or act, and not a general assignment, and was suspended and superseded by the National Bankruptcy Act of 1898 (Rec., pp. 32-33).

BRIEF OF THE ARGUMENT.

In the instant case the question presented in the state court and presented in this court is, whether or not the Insolvency Law of the State of Arkansas is a valid, enforceable and subsisting law for administration of the estates of insolvents who invoke the jurisdiction of the state court to administer their estates, or whether the provisions of such law were superseded and suspended by the passage of the National Bankruptcy Act in 1898, and by reason thereof the proceedings of insolvency in the state courts were void and the funds in the hands of a receiver were subject to the satisfaction and payment of plaintiff's debt under proceedings appropriately invoked.

The Insolvency Law, under which Pinkus is proceeding, was passed by the General Assembly of the State of Arkansas in the year 1897, and approved on June 26th of said year, and now is embodied in sections 5885 to 5893, both inclusive, of Crawford & Moses' Digest of the statute laws of said state, and which we quote in full, as follows:

> "Sec. 5885. Any insolvent debtor may file in chancery court of the county in which he resides a complaint, in which one or more of his creditors shall be made defendants, asking to be declared an insolvent, and asking for the appointment of a receiver to take charge of his property and distribute the same among

his creditors; and, upon the filing of such petition, the Chancery Court, or judge thereof in vacation, shall appoint a receiver, and, when the receiver shall have qualified, such debtor shall turn over to such receiver all of his property, and for the real estate he shall execute, acknowledge and deliver to such receiver a proper deed of conveyance; but such debtor shall by the Court be allowed to select and reserve whatever property may be allowed to him by law as exempt from execution.

"Sec. 5886. The receiver shall intervene in every case in which the property of such insolvent debtor has, within ten days before the filing of such petition, been attached, and, upon such receiver's motion, every such attachment shall be dissolved, and the attached property shall be turned over to such receiver upon the payment by the receiver of all costs which shall have accrued in the attachment suit.

"Sec. 5887. The debtor shall furnish the names and addresses of his creditors, who shall be notified by mail and also by order of publication of the filing of the complaint.

"Sec. 5888. As soon as the receiver shall have taken the property into his custody, he shall proceed under the direction of the court, or the judge in vacation, to convert the same into money, and upon final hearing the Court, after deducting the costs and paying all public taxes, shall order the proceeds to be distributed among the creditors in the order and with the preferences following:

"First. The salaries of employes earned within three months and all laborers' wages shall be paid first.

"Second. After making the above payments, the funds in hand shall be applied pro rata toward the payment of the claims of all creditors who shall, before the making of the order of distribution, file in the court a stipulation for the use of the debtor to the effect that, in consideration of the preference to be thus obtained, the debtor shall be acquitted of all further liability in personam to such creditor.

"Third. After making the above payments the remainder of the funds, if any, shall be paid and distributed equally among the other creditors.

"Sec. 5889. The stipulation provided for in the preceding section shall not be held or construed to affect or impair the right of such creditor to collect the remainder of his claim, if any, from any other person who is bound to him therefor, or to enforce any other security he may have for his claim, nor shall such stipulation be held to constitute a bar to any action brought or proceeding taken against such debtor for the balance of his debt, if the creditor shall prove the debtor was guilty of fraud in obtaining such stipulation, either by withholding his property from the receiver or otherwise. Provided, such action or proceeding be commenced within twelve months from the filing of such petition.

"Sec. 5890. Any creditor having a lien upon any of the debtor's property for his claim shall be required to make a proper deduction for the value of his security before participating in the distribution of the general assets of the debtor.

"Sec. 5891. In case of an insolvent partnership, all or any of the partners may unite in one complaint filed in the county where either one resides; but in

such cases all individual as well as firm property must be turned over to the receiver, and the firm property and the individual property shall be administered separate, according to the rules of equity.

"Sec. 5892. Except as to the creditors of the first class, as enumerated in section 5885, no order for the distribution of the funds among the creditors shall be made within ninety days from the first publication of the order provided for in section 5887.

"Sec. 5893. Any person who shall withhold from the surrender of his assets any property, money or other thing of value, to exceed the amount of ten dollars, with intent to cheat, defraud or hinder his creditors in the collection of a debt, shall be deemed guilty of a felony, and be punished by imprisonment not less than six months nor more than two years."

The chancery suit filed by the International Shoe Company seeking to impound the moneys in the hands of the receiver, derived from the sale of insolvent's assets, and apply the same to the payment of its said judgment, was instituted under and by virtue of Sections 4366, 4369 and 4370 of Crawford & Moses' Digest of the Statutes of the State of Arkansas, which we quote as follows:

"Sec. 4366. After an execution of fieri facias, directed to the county in which the judgment was rendered, or to the county of the defendant's residence, is returned by the proper officer, either as to whole or part thereof, in substance, no property found to satisfy the same, the plaintiff in the execution may institute an action, by equitable proceedings, in

the court from which the execution issued, or in the court of any county in which the defendant resides or is summoned, for the discovery of any money, chose in action, equitable or legal interest, and all other property to which the defendant is entitled, and for subjecting the same to the satisfaction of the judgment; and in such actions persons indebted to the defendant in the execution, or holding the money or property in which he has an interest, or holding the evidences or securities for the same, may be also made defendants."

"Sec. 4369. In the actions mentioned in the preceding sections the plaintiff may have an attachment against the property of the defendant in the execution, similar to the general attachments provided for in chapter 10, without either the affidavit or bond therein required.

"Sec. 4370. A lien shall be created upon the property of the defendant by the levy of the attachment, or service of the summons, with the object of the action indorsed thereon, on the person holding or controlling his property."

We will not burden the Court by quoting Article I, Section 8, Clause 4 of the Constitution, and the sections of the National Bankruptcy Act touching upon the instant case, contained in sections 9586-9588, both inclusive, of the 1918 Compiled Statutes of the United States, but will simply refer to such sections of the Constitution and of the Bankruptcy Act.

In order to justify its final determination that the Arkansas Insolvency Act is not suspended by the Federal

Bankruptcy Act of 1898, the Supreme Court of Arkansas, in its opinion, says:

> "The Arkansas statute, with reference to insolvent debtors, simply authorizes a debtor to go in the Chancery Court and ask for the appointment of a Receiver to take charge of his property and distribute the same among his creditors. The effect of this is the same as if the debtor had made an assignment of his property for the benefit of his creditors."

If this was a correct statement of the law and the Chicot Chancery Court had merely pursued this course plaintiff in error would have no grounds for complaint. We recognize the right, irrespective of statutory provisions, of a debtor to make an assignment for the benefit of all of his creditors, and a statute which only provided that the property of the debtor should be placed in the hands of a Receiver of the Chancery Court for such distribution, under the orders of the Court, would only additionally safeguard the rights of the creditors and no one could object to it, but the statute goes much further than this. Section 5888 id, among other things, provides that the Receiver, after he shall have reduced the assets to money, shall pay, first, the salaries of employes earned within three months and all laborers' wages; secondly, the funds in the Receiver's hands shall be applied pro rata toward the payment of the claims of all creditors who shall, before the making of the order of distribution, file in the court

a stipulation for the use of the debtor to the effect that, in consideration of the preference to be thus obtained, the debtor shall be acquitted of all further liability in personam to such creditor, and, lastly, the Receiver, after making the above payments, shall distribute the residue, if any, among the other creditors.

Pinkus, in filing his petition in the Chancery Court, was not trying to make an assignment for the benefit of his creditors, but he was trying to obtain the same relief provided for by the Federal Bankruptcy Court. In his petition he prays:

> "Plaintiff further prays that said creditors be required to file with this Court their stipulation to the use and benefit of this debtor, agreeing to accept the same in full satisfaction of their demand against him, and that after the expiration of ninety days from the granting of this petition a proper distribution be made by said Receiver, paying his said creditors in full, and upon final hearing of this cause that he be granted a full and complete discharge from any and all of his debts and obligations to his creditors" (Rec., p. 9).

The decree of the Chancery Court granting the insolvent's petition, and attacked by plaintiff in error, and which was upheld by the Supreme Court of Arkansas, among other things, provides:

> "It is therefore by the Court ordered, adjudged and decreed that the plaintiff, I. Pinkus, is declared

insolvent, and that M. A. Threet is hereby appointed Receiver of this court and he is hereby directed to take charge of all the property of the plaintiff and to immediately have him select his claimed exemptions and submit the same to this Court for confirmation, and to take an inventory of any and all his property and liquidate the same for the purpose of paying his creditors; the Receiver is further directed to notify such creditor, by letter, of this action and direct them to make proper proof of their claim for allowance, with the necessary stipulation that they will participate in the proceeds in full satisfaction of their demands; that after the expiration of ninety days you (meaning the Receiver) will proceed to make the payments of the first dividend to the creditors as directed by law in such cases; that is, to pay all costs herein, first; and, second, to pay all salaries earned within the last past ninety days; third, to pay the claims of those who have duly filed their claims with the above stipulation, if enough funds are in your hands to pay the same; and, lastly, you (meaning the Receiver) are directed to pay any and all other claims of creditors, or as much as the funds in your hands will pay, all creditors of the same class receiving an equal percentage of the funds" (Rec., p. 13).

The fact that Pinkus in the proceedings in the instant case was seeking the identical relief afforded by the Federal Bankruptcy Act is here, in the opinion, distinctly recognized by the Arkansas Supreme Court, for it says:

"The debtor in the case at bar could have filed his petition in voluntary bankruptcy and the fed-

> eral court would have ordered a distribution of his property among his creditors just as was directed by the chancery court" (Rev., p. 29).

How can this finding be reconciled with that first quoted above? The two conclusions are irreconcilable conflict, and, as it would appear that the last quotation from the opinion is a correct statement of what might have been done by Pinkus, and that in so doing he would have secured the same relief that the state Chancery Court has undertaken to afford him. In the instant case, it would further appear that the Arkansas insolvency statute is something more than an authority to make what "in effect" would be an assignment for the benefit of his creditors.

Upon the question of what is required to constitute an insolvency statute the authorities are at variance, some holding that the elements of an insolvency law are insolvency, surrender of property, its administration by a receiver or trustee, distribution of assets among the creditors or other matters not permissible in the absence of such statute, and that it need not necessarily provide for the discharge of the debtor from the unpaid balances of his debts. Other authorities hold that, in order to constitute an insolvency statute, which would be suspended by the Bankruptcy Act, such insolvency law must provide for the discharge of the debtor and, in the absence of such provision, hold that the state statute is not an

insolvency act and not superseded by the National Bankruptcy Act. But all of the authorities hold that, where the state insolvency law does provide for the administration of the debtor's assets, distribution of the same, and discharge of the debtor, such statute is superseded by the Federal Bankruptcy Act, and that the state courts are without jurisdiction to enforce the same while the Bankruptcy Act is in force.

As was said by the late Judge Trieber, in the case of **In Re Weedman Stave Company**, 199 Fed. 951, it will be found that the Arkansas statute (Secs. 5885 to 5893 of Crawford and Moses Digest of the Statutes of Arkansas) contains every one of these essentials, and the Arkansas Supreme Court has so recognized and repeatedly held that said insolvency law was suspended and superseded by the Federal Bankruptcy Act of 1898.

Hickman v. Parlin Orendorff, 88 Ark. 519, 115 S. W. 371;

Baxter Co. Bank v. Copeland, 114 Ark. 316, 169 S. W. 1180;

Roberts Cotton Oil Co. v. Morse, 97 Ark. 513, 135 S. W. 324;

Morgan v. State, 154 Ark. 279, 242 S. W. 384.

The Arkansas statute being, therefore, a state insolvency law, and suspended by the Bankrupt Act of 1898, the Arkansas courts are without jurisdiction to enforce the same, and where they undertake, as in the instant

case, to assume jurisdiction of a petition, under said act, their actions and judgments and decrees rendered in such cases are coram non judice, and, therefore, absolutely void and subject to collateral attack. The possession of property by receivers so appointed is wrongful; they, being appointed by a court without jurisdiction, become merely trustees for the insolvent and his creditors.

"It has been held that the operation of a state insolvency law is suspended by the passage of the Federal Bankruptcy Act and that proceedings under the state laws cannot thereafter be instituted. In any event, a national bankruptcy law suspends the operation of state insolvency laws, so far as they conflict with it."

3 R. C. L., page 165, Sec. 2.

In a case where the Marion Chancery Court of Arkansas undertook to administer the estate of an insolvent under a general deed of assignment, Mr. Justice Wood, speaking for the Arkansas Supreme Court, said:

> "An attack was made by appellant on this deed of assignment by its objection to the Marion Chancery Court assuming jurisdiction to administer the assets under this insolvency act within four months after the deed of assignment. The Marion Chancery Court, therefore, erred in assuming jurisdiction to administer the personal assets of the estate under this deed of assignment, and the Chancery Court of Baxter County erred in holding that the Marion Chancery Court had such jurisdiction. * * * The State Insol-

vency Act of June 26th, 1897, was superseded by the Bankruptcy Act of Congress of July 1st, 1898, in so far as they relate to the same subject matter and affect the same persons."

Baxter Co. Bank v. Copeland, supra.

Again, the Arkansas Supreme Court, in approving the decision of Judge Trieber in the case of **In Re Weedman Stave Company**, supra, says:

"In that case it was held that our statute authorizing a chancery court of a state to take possession of the assets of an insolvent corporation and distribute the same through its Receiver pro rata, among its creditors, after payment of wages and salaries, which constitute preferred claims, requiring all creditors to prove their claims within a stated time or be barred, and dissolving all preferences obtained within ninety days, constitutes a state insolvency act, which was suspended by the Bankruptcy Act of Congress."

Morgan v. State, supra.

It will be borne in mind that Pinkus was an insolvent merchant and, therefore, within the purview of the National Bankruptcy Act. Passing upon a like case, the Supreme Court of Arkansas said:

"The insolvency laws of Arkansas were suspended by the Bankruptcy Act of Congress of July 1st, 1898, and since that date have remained, and are now, in abeyance, in so far as they relate to the same subject

matter and affect the same persons as the Act of Congress, which is still in force (citing numerous authorities). In this case the plaintiff is an insolvent merchant and now seeks relief provided by the Bankruptcy Act of Congress. The Chancery Court was without jurisdiction and its decree is void."

Hickman v. Parlin-Orendorff, supra.

In the above case the insolvent debtor pursued the exact procedure taken by Pinkus, and a similar decree was entered by the Chancellor to that which we attack in the instant case. In no single particular does the proceeding in the one differ from the other in the lower court, except that the former reached the Supreme Court on appeal without a suggestion of want of jurisdiction having been made below, while in the instant case the question of jurisdiction was raised in the lower court by plaintiff in error in its petition to vacate the decree, which plea to the jurisdiction was overruled by the Chancellor in sustaining the demurrers to said petition, thereby holding that said Chancery Court had jurisdiction to administer the estate of an insolvent debtor and provide for his discharge in accordance with the provisions of the Arkansas insolvency law.

In the face of the ruling in the Hickman case, supra, the Supreme Court in the instant case affirmed the action of the lower court. One of these decisions must be right and the other wrong. Both cannot be sustained.

The decision of the Arkansas Supreme Court in the Hickman case, supra, is sustained by the weight of authority.

"Persons who have the privilege of becoming voluntary bankrupts under the Bankruptcy Law cannot ignore the privileges of that law and become bankrupts or insolvents under any state law."

Closser v. Strawn, 227 Fed. 139-146.

"If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner and in a certain form, it cannot be that the state legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress to prescribe additional regulation, and what they may deem auxiliary provisions for the same purpose. In such a case the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter."

Southern R. R. Company v. Railroad Commission of Indiana, 236 U. S. 439.

"The Georgia insolvency laws, providing for the distribution of the assets of insolvents, and authorizing the Chancellor to recommend to creditors of a defendant that they release him from further liability, being in effect a state bankruptcy act, its operation

was suspended by the Bankruptcy Act of 1898, and proceedings under the state act are void."

Carling v. Seymour Lbr. Co., 113 Fed. 483;
In re Pickens Mfg. Co., 158 Fed. 894.

"We conclude, therefore, that the statutes of this state relating to the subject of bankruptcy are suspended during the existence of the Federal Bankruptcy Act, and that such statutes afford the courts of this state no power or authority to discharge debtors from their debts."

In re Tarnowski, 210 N. W. (Wisc.) 836, 49 A. L. R. 689.

"A national bankruptcy law being in existence, it is the right and duty of a state court to refuse to take jurisdiction of proceedings attempted to be instituted under the superseded state insolvency law, and when an insolvent files a petition in the state court seeking the benefit of that law the Court should dismiss the petition."

Ketchum v. McNamara 72 Conn.
Hickman v. Parlin-Orendorff, supra;
Baxter Co. Bank v. Copeland, supra;
Van Nostrand v. Carr, 30 Md. 128;
Harbaugh v. Costello, 56 N. E. (Ill.) 363;
Barber v. Int. Co. of Mexico, 49 Atl. (Conn.) 758.

"During the existence of a national bankruptcy law all proceedings under a state insolvency law are null and void for all purposes."

Littlefield v. Gay, 52 Atl. (Me.) 925;
Thornhill v. The Bank of Louisiana, Fed. Cas. No. 13,992.

In its opinion in the instant case the Supreme Court of Arkansas, while seeming at times to recognize the doctrine, as laid down by it in previous decisions, that the National Bankruptcy Act suspends state insolvency laws as to all persons and property within the purview of such Federal Bankruptcy Act, yet by the following language, "Unless the creditors take action for the purpose of giving the bankrupt court jurisdiction," holds that proceedings under such Insolvency Act are valid until and unless the jurisdiction of the Federal Bankruptcy Court is invoked.

As stated, Pinkus was a merchant and, as such, within the purview of the National Bankruptcy Act, that is, he could have invoked the jurisdiction of the Federal Bankruptcy Court. He was insolvent, according to his own petition, and therein did not, as the Supreme Court of Arkansas would seem to hold, merely turn his property over to a receiver or trustee to be administered and applied as far as it would go toward the liquidation of his debts, but he prays to be discharged from his debts, and the decree of the chancery court seeks to do this very thing. The plaintiff in error could not throw Pinkus into bankruptcy. The record discloses that there were more than twelve creditors. The claim of the plaintiff in error is less than $500.00, and it cannot be assumed that it could have obtained the co-operation and assistance of two other claimants, whose joint debts would have sufficed to give the Federal Bankruptcy Court jurisdiction on an involun-

tary petition. It is, therefore, obvious that plaintiff in error would be compelled to accept the adjudication of the state court, file its claim therein and submit to its jurisdiction, or be precluded from collecting any part of its debt out of the funds derived from a sale of the assets of the insolvent.

As was held by this Court in **Sturgis v. Crowinshield**, 4 Wheat. 122, when Congress has legislated and by its legislation indicated its purpose to cover the entire field, the power of the state legislatures upon the subject ceases.

When Congress has legislated upon a subject, authority for which is afforded by the Constitution, the jurisdiction of the federal courts is exclusive, and the holding of the Arkansas Supreme Court, above quoted, is in effect to give the state courts concurrent jurisdiction unless ousted by the action on the part of the federal court. This does not seem to us to be the law, and is certainly not supported by the weight of authority.

Mr. Remington, in his work on Bankruptcy, states the law as follows:

> "But, whenever Congress does pass a bankruptcy law, the law supersedes, as long as it is in existence, all state insolvency or bankruptcy laws relative to persons and acts declared therein to be subjects of bankruptcy, and proceedings under the state involvency laws regarding debtors who could, upon the doing of the particular act complained of, be subjected to the operation of the federal Bankruptcy Law, are abso-

lutely void, whether or not federal bankruptcy proceedings actually follow; the constitutional provision making the law passed in pursuance of it paramount."

Remington on Bankruptcy, Vol. 5, Sec. 2106, and cases cited.

"State insolvency and bankruptcy laws are ipso facto suspended (as to the same classes covered by the Federal Bankruptcy Act) no matter whether federal bankruptcy proceedings follow in the particular case involved or not; the state court will not have jurisdiction (citing numerous authorities). Some cases seem to hold that they are void only on the subsequent institution of federal bankruptcy proceedings; but, on analysis, such cases will be found not to be cases under state bankruptcy nor state insolvency laws, but rather to be cases under division 1 or 2 of this chapter, relating to the custody of property where there are legal liens nullified by bankruptcy, or where an assignment or receivership has been created, voidable only in case of bankruptcy within four months."

Remington on Bankruptcy, Vol. 5, Sec. 2107, and cases cited.

We invite the Court to compare the reasoning of the Arkansas Supreme Court, upon which is based its holding, that the proceedings of the state court, under the state insolvency law, are valid, until the jurisdiction of the Federal Bankruptcy Court is invoked, with the reasoning of the Pennsylvania Superior Court, in the case of **Potts v.**

Smith Mfg. Co., 25 Pa. Super. Ct. 206, which we desire to quote at length, as follows:

> "The only cases decided by courts of last resort holding a different view, which have come to our observation, are Ex parte Ziegenfuss, 24 N. C. (2 Ired. L.) 463, and Reed v. Taylor, 32 Iowa 209. These cases recognize the paramount authority of the act of Congress, but hold that the state statute is operative up to the time when proceedings are instituted under the National Bankrupt Act. The efficiency of the state statute is made to depend upon action or non-action under the bankrupt law. This seems a foundation entirely too unsubstantial upon which to base the right to proceed under the state law as to persons and subjects affected by the National Bankrupt Act. The law would be vain which would invite legal process liable to be avoided and defeated at any stage of the proceedings by the assertion of another and paramount authority; it should be effective for the purpose of carrying to conclusion proceedings instituted thereunder. It is conceded on all sides, however, that any proceedings under the insolvency law of the state might be rendered abortive by an insolvent debtor or his qualified creditors by filing a petition in bankruptcy where the debtor was subject to the operation of the National Bankrupt Act. The national and state laws are intended, in a large degree, to operate upon the same persons and property, and while there is a close resemblance in the methods of administration, the mode of procedure and remedies are not the same. There might, and doubtless would be, conflict in the operation of the national and state statutes. The latter must, therefore, yield

to the former. The uniformity contemplated by the Constitution can only be secured through the act of Congress, the prosecution of insolvent proceedings under the laws of the various states necessarily tending to confusion and lack of uniformity. In view of the manifest purpose of the constitutional provision on the subject of bankruptcy and the great weight of authority in support of the conclusion reached, we feel constrained to hold that the Act of June 4, 1901, relating to insolvency, did not become operative, because of the existence of the bankruptcy laws of the United States of July 1st, 1898, as to persons and subjects to which the latter act applies."

In the case of **Morgan v. State**, supra, the Arkansas Supreme Court said:

"In construing this act in the case of **In re Watts and Sachs**, petitioners, 190 U. S. 1, the Court held that the operation of the bankruptcy laws of the United States cannot be defeated by insolvent corporations applying to be wound up under state statutes. * * * So, too, in **Roberts Cotton Oil Company v. F. E. Morse**, 97 Ark. 513, this Court held that a federal bankruptcy act does not repeal or abrogate a state law in conflict with it, but supersedes and suspends its operation for the time being upon persons or cases within the purview of its provisions. * * * It is one thing for a bankruptcy court to declare under what circumstances it will exercise its jurisdiction in matters relating to the bankruptcy laws and quite a different thing to say that this discretion may be exercised by state courts. To hold that state courts have any jurisdiction to adjudicate under which circum-

statutes a person or corporation entitled to the benefit of the bankruptcy laws may file a voluntary petition in bankruptcy would be to oust the federal bankruptcy courts of that exclusive jurisdiction vested in them by the Constitution of the United States and declared by the Supreme Court of the United States. * * * In other words, it was a question for the federal court in bankruptcy and not for the Chancery Court to declare under what circumstances the corporation was entitled to be adjudged a bankrupt, or whether it was entitled at all to be declared a bankrupt."

In the case of **In re Tarnowski**, supra, after citing numerous authorities, the Court said:

"In all of these cases it was said, in effect, that the Federal Bankruptcy Law constitutes the supreme law of the land upon the subject, so far as it is embraced within the federal legislation, and that all state laws relating to bankruptcy, so far as they touch the field covered by the federal legislation, were superseded by the Federal Bankruptcy Act and are suspended during the period of its existence. The soundness of these declarations can scarcely be questioned, and the fact that we have before us the question raised after, rather than prior, to the attempted discharge of the bankrupt cannot affect the status of the state law. That is either in force or it is not. It cannot be in force under one set of circumstances and not in force under other conditions. It cannot be the law that the state court has power to discharge a bankrupt from his debts when its proceedings in the administration

of the estate are not interfered with by the federal court, but that such power is lost when a federal court takes over the administration of the estate. We think it is clear enough that the insolvency laws of this state are completely superseded by the Federal Bankruptcy Act as to all matters comprehended within that legislation."

"The test of jurisdiction under the state law does not rest upon the volition of the debtor. If his person and property are or may be subject to the bankrupt law, then as to him and his possessions the state insolvency law is in abeyance and powerless. Upon any other view it would be in the power of the debtor at any time to oust the jurisdiction of the state court after it had been assumed. This would result in great confusion. It may be asserted by holding, as we do, that when the power falls within the purview of the Bankruptcy Act, whether by voluntary or involuntary proceedings, the state insolvent law must be silent. It follows that the insolvency court was without jurisdiction in this case, and the appointment of the assignee was unauthorized and void."

Littlefield v. Eby, supra.

"Having determined that this act is in the nature of an insolvency law, we now come to defendant's third proposition—that, when the Congress purported to have been repealed the National Bankruptcy Law had been and then was in force, and repealed and rendered inoperative the Statute of 1905, and deprived the state court of any jurisdiction in the matter of appointing a receiver by virtue of such statute.

> This contention, it is evident, raises the question of procedure as to whether the jurisdiction of a state court can be attacked collaterally without invoking the aid of the United States Bankruptcy Law. This question seems to be settled in the affirmative by several very recent decisions in our own state and by many decisions of other state and federal courts citing numerous authorities. The opinion in the Court should have sustained plaintiff's petition, dismissed the Receiver and discontinued the proceedings begun and prosecuted under the state law."

Moody v. First Wisconsin Nat. Co., 66 Atl. (Md.) 907.

The Supreme Court of Wisconsin, in the case of Wright v. Union City Banking & Trust Co., 107 Wis. 171, relative to an insolvency law of the State of Wisconsin containing a provision for discharge of the debtor from his debts, as to accepting creditors says:

> "Among other features, it provided that such debtor might become discharged from his debts, as a part of the proceedings were under his assignment, and that every creditor, residing within or without the state, who should accept a dividend out of the assigned estate, or participated in any way in the proceedings, should be bound by the order of discharge, subject to the right of appeal. If this provision feature of the scheme had been contained in the original assignment executed by the debtor it would have rendered the assignment void. It became valid only by force of the statute. When the way was cleared to every debtor making an assignment and only to distribute his prop-

erty to his creditors, but to demand a discharge from his indebtedness as to every creditor who should come in or accept a dividend. **It was, in legal effect, tacking a bankrupt law to the assignment law.**"

The Supreme Court of Texas in the case of Patty-Jaicox & Richards Co., 93 Texas 208, wherein was involved an assignment law of Texas which had a provision requiring debtors to accept under the assignment and providing if creditors be paid 33⅓ per cent of their claims they shall discharge the debtor from further liability, held, that upon the passage of the Bankruptcy Act that such provision for a discharge, being an incident law of the state providing for a release by the creditor, was suspended by the Bankruptcy Law of the United States; but the assignment, if otherwise valid, would be enforced.

This Court passed upon an assignment statute of New Jersey in the case of Boese, Receiver, v. King et al., 108 U. S., page 379, and held that the provision in such assignment law providing for a release of the debtor was suspended by the National Bankruptcy Act.

In the instant case, however, no assignment of any character, statutory nor common law was made by the defendant in error Perkins, but he invoked the jurisdiction of the Chancery Court of Grant County, Arkansas, under an insolvency law, to declare him an insolvent, provide for the reduction of his assets to cash, provide for the determination of his exemption, provide for the classification of claims against his estate, the payment of preferred debts,

the payment of his creditors who would release him from liability upon payment of their pro-rata part of his assets, and after they were paid, for the distribution of the balance of his assets to nonaccepting and nonconsenting creditors. The entire proceeding being purely a bankruptcy proceeding, and in no sense an assignment, we say it was void ab initio, as the law under which the proceeding was instituted and prosecuted was superseded and suspended by virtue of the passage of the National Bankruptcy Act, as Congress, under the Constitution, expressly retained the power under article I, section 8, clause 4, "To establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States."

At common law the act of the assignment does not pay the debts nor discharge the assignor from liability for their payment. The indebtedness of the assignor is discharged only to the extent of actual payment out of proceeds of the property assigned.

> Pillsbury v. Kingen, 33 N. J. Eq. 289;
> James v. Ledeker Strain Co. (Wyoming), 233 Pac. 137.

The Supreme Court of Iowa in the case of Sperry et al. v. Gallaher et al., 77 Iowa 107, says in reference to an assignment which contains the following clause: "In case that any of my creditors who file claims against my estate and receive a dividend therefrom do not receive the full amount due them, then the rest of any just pro-rata share

of the amount due them shall be deemed a satisfaction of their demand and so by them accepted." "This clause made the assignment conditional, and, therefore, void, and the Court rightfully so held in a garnishment proceeding against the assignee by a creditor who repudiated the assignment and sought to reach the property in the hands of the assignee for the full satisfaction of his claim."

The Court further says:

> "By the terms of the assignment, the creditors were required, when they received their share of the proceeds of the property, to release or extinguish the balance of their claims against the debtor. This would enable every insolvent debtor to enact a bankruptcy law in his behalf."

The courts in all states of the United States, with the exception of those states having a statutory enactment governing such condition, have held that an assignment which provides that the creditors of the assignee shall receive their pro rata part of the proceeds of such assignment in full satisfaction of their demands and claims, is a fraudulent conveyance and void.

McLaren, Trustee, v. Kramer, 26 N. D. 244;
Duggan v. Bliss, 4 Colo. 223;
Ingram v. Wheeler, 6 Conn. 277;
Hubbard v. McNaughton, 43 Mich. 220;
May v. Walker, 35 Minn. 194;
Bradley v. Ames, 50 Mo. 387;
Owen v. Harris, 36 N. J. Law 22;

Grover v. Wakeman, 11 Windell 187;
Adkins v. Jordan, 5 Ohio 293;
Nesbitt v. Dickey, 13 Ill. 387

This same doctrine has been announced in the State of Arkansas:

Collier v. Davis, 47 Ark. 367;
Lowenstein v. Finney, 54 Ark. 124;
Nelson v. Harper, 122 Ark. 39;
Simmons v. Rose, 7 Fed. (2nd Series) 354.

The Court will thus see that the American courts have held, except where modified or changed by statute, that assignments which are attempted to be made under the common law and have a provision requiring that the creditors shall consent to the assignment and, in consideration of the benefits accruing to them, discharge the assignee from further liability, are void, because it is an unlawful attempt by the debtor to delay and hinder creditors in the collection of their debts

While the instant case is from the State of Arkansas, at the same time it is of the utmost importance to the jurisprudence of the United States that this Court determine the law for all time involving the effect of the National Bankruptcy Act upon assignment statutes or insolvency laws of a particular state which provide for a distribution of the debtor's estate among his creditors and a release of the debtor upon payment of a less sum than is due the creditor.

The decided weight of authority supports the doctrine laid down in the cases above cited, and we submit that the Supreme Court of Arkansas erred in affirming the decree of the Chancery Court of Chicot County and holding that said court had jurisdiction under the State Insolvency Law to declare I. Pinkus, a merchant, an insolvent, to administer his estate and grant him a discharge from his obligations, while the National Bankruptcy Act is in full force and effect.

We respectfully submit that its holding should be reversed and this cause remanded to said court with appropriate instructions as to the entry of a proper judgment in said cause.

Respectfully submitted,

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MAR 13 1928
CHARLES ELMORE CROPL
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1927.

INTERNATIONAL SHOE COMPANY,
Plaintiff in Error,
v.
I. PINKUS, GEORGE FRANKLIN,
SAM DESSENT et al.,
Defendants in Error.

No. 12

On Writ of Error to the Supreme Court of the State of Arkansas.

REPLY BRIEF FOR PLAINTIFF IN ERROR TO BRIEF OF DEFENDANT IN ERROR AND ARGUMENT IN SUPPORT OF PLAINTIFF'S CASE.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1927.

INTERNATIONAL SHOE COMPANY,
Plaintiff in Error,
v.
I. PINKUS, GEORGE FRANKLIN, SAM DESSENT et al.,
Defendants in Error.

No. 401.

On Writ of Error to the Supreme Court of the State of Arkansas.

REPLY BRIEF FOR PLAINTIFF IN ERROR TO BRIEF OF DEFENDANT IN ERROR AND ARGUMENT IN SUPPORT OF PLAINTIFF'S CASE.

To the Honorable Judges of Said Court:

The defendants in error have presented their theory of the case and rely upon three propositions:

First. That voluntary proceedings under the Federal Bankruptcy Law were not available to the defendant I.

Pinkus, because he had been granted a discharge under a voluntary bankruptcy proceeding within six years of the time when he applied to the state court of Arkansas in the insolvency proceeding.

Second. That the plaintiff in error had no debt provable in bankruptcy against Pinkus, because its debt or judgment was less than $500.00; and

Third. Because plaintiff in error, having a debt of less than $500.00, and being unable to obtain two additional creditors to join in the filing of a petition in bankruptcy, that it had no right to contend that the State Insolvency Law of Arkansas was suspended and superseded by the Bankruptcy Act, and that unless a petition in bankruptcy was filed that the state Insolvency Law was in full force and effect.

The defendants in error have erred in all three propositions because it is conceded and admitted that I. Pinkus was a merchant, and under Section 4 of the Bankruptcy Act of 1898, as amended, any person shall be entitled to the benefits of the Bankruptcy Act as a voluntary bankrupt, and any natural person, except a wage-earner or a farmer, owing debts to the amount of $1,000.00 or over (it was conceded that Pinkus' debts exceeded that amount) may be adjudged an involuntary bankrupt. Whether the bankrupt may or may not obtain a discharge has no effect upon his adjudication as a voluntary or involuntary bankrupt, as a discharge is a matter of grace and not a matter of right.

The plaintiff in error unquestionably had a provable claim in bankruptcy, as Section 63 of the Bankruptcy Act provides:

> "That debts of the bankrupt may be proven and allowed against his estate which are (1) a fixed liability as evidenced by a judgment or instrument in writing absolutely owing at the time of the filing of the petition against him, whether then payable or not,"

and in the instant case the plaintiff in error's judgment was obtained prior to Pinkus' invoking the Insolvency Law of the State of Arkansas.

The third question presented that the plaintiff alone not being able to file a petition in bankruptcy, as its claim was less than $500.00, and no proceeding in bankruptcy having been filed, that the Arkansas Insolvency Statute was in full force and effect, is contrary to the Constitution of the United States. Article I, Section 8, Clause 4 of the Constitution of the United States provides:

> "That Congress shall have the power to establish a uniform rule of naturalization and uniform laws on the subject of bankruptcy throughout the United States."

The Supreme Court has, in numerous cases, held that when Congress has legislated upon the subject of bankruptcy, the bankruptcy laws or insolvency laws passed by the respective states are superseded and suspended.

A further investigation, since the writing of the original brief in this case, has led counsel to believe that they may be of some constructive help to the Court in calling attention to the various cases which have been decided, both state and federal, relative to the subject now under consideration.

This Court, in the case of Farmers Bank v. Smith, 6 Wheaton 131, held:

> "That a bankruptcy or insolvency law of the state which discharges the personal debts of the debtor and his further acquisition of property is valid, though a discharge under it cannot be pleaded in bar of an action by a citizen of another state in the courts of the United States or of any other state."

This decision however, was rendered at a time when no national bankruptcy law was in effect, and in order that the Court may, in considering these cooperative cases, have the aid of the time when the various bankruptcy acts were passed, counsel will give the Court that data.

The first National Bankruptcy Act was passed April 4, 1800, it was repealed December 19th, 1803. The second National Bankruptcy Act was passed August 19th, 1841, and was repealed March 3rd, '43. The third National Bankruptcy Act was passed March 2nd, 1867, and was repealed June 7, 1878. The fourth National Bankruptcy Act was passed July 1st, 1898, and is still effective.

It was prior to the passage of the last Bankruptcy Act that the majority of the states passed their respective in-

solvency or bankruptcy laws, and those are the laws that are now being attacked as being suspended by the National Bankruptcy Act of July 1st, 1898.

In our original brief we have cited a number of cases from states that have passed upon their own insolvency laws and have held them suspended. We now desire to call the Court's attention to cases wherein state insolvency laws have been held effective by the respective states and not superseded by the Bankruptcy Act.

In 1879, and amended in 1885, the State of Texas passed an Insolvency or Bankruptcy Act providing for assignments for the benefit of creditors (Revised Statutes of 1911, Articles 30 to 186, incl.). These articles provide for an assignment by a debtor and, in event he desires so to do, to provide in such assignment that same should be for the benefit of such creditors only as consent to accept their proportionate share of his estate in settlement of their debts and discharge him from the balance of their respective claims. They provide for the naming of the assignee, bond being given by him, recovery of property fraudulently conveyed, conditions of claims, examination under oath of the assignor and witnesses before a judge of the District or County Court, to recover property concealed or secreted, and provide for the filing of the final account by the assignee and the discharge of such assignee. The debtor is automatically discharged by consenting to the assignment and the filing of claims of said debts.

After the passage of the Bankruptcy Act the provision relative to the acceptance of the benefits of the assignment was attacked in the Supreme Court of Texas, and it held that the effect of the Bankruptcy Act upon the State Insolvency Law is a federal question (Patty-Joiner & Eubank Co. v. Cummins, 93 Texas 604), and the Court in that case also held, under the decision of Boese v. King, 108 U. S. 379, that the provision for a release or discharge of the debtor was not effective, but was suspended by virtue of the Federal Bankruptcy Act.

In a later case (Hajek v. Leuck, 96 Texas 517) the Court held that where a debtor had made an assignment in pursuance of the statute providing for a release as to a creditor accepting the benefits that a creditor who did accept the benefits was bound thereby and the debtor discharged, and further held that such provision in the assignment was good at common law and effective without the Texas Insolvency Statute. The peculiarity of this decision is that the common law is not and was not effective in the State of Texas except, as your Honor's attention is called thereto, Texas having been a republic which gained her independence from Mexico. The laws which were in force in Mexico at such time were based upon the Civil Code, and the Republic of Texas adopted her own code and in 1840 passed a statute which is now Revised Statutes, Article 5492, and reads as follows:

> "The common law of England, so far as it is not inconsistent with the Constitution and laws of this

state, shall, together with the Constitution and laws, be the rule of decision, and shall continue in force until altered or repealed by the Legislature."

The Supreme Court of Texas, in construing this provision of the statute, says in Grigsby v. Reid, 105 Texas 597:

> "The effect of the Act of 1840 was not to introduce and put into effect the body of the common law, but to make effective the provisions of the common law, so far as they are not inconsistent with the conditions and circumstances of our own people; and further, the common law of England adopted by the Congress of the Republic was that which was declared by the courts of the different states of the United States."

The Court has further held in numerous cases that where the Legislature has passed a law upon a given subject, that the common law is thereby repealed as to being a rule of decision upon such subject. (See City of Dallas v. Gill, 199 S. W. 1145.)

Counsel do not agree with the Supreme Court of Texas in reference to the proposition that at common law an assignment could release a debtor.

This Court, in the case of Brashear v. West, 7 Peters 608, when passing upon an assignment under the laws of Pennsylvania which provided that all creditors who did not, within ninety days, execute a release of all claims and demand should not share in the benefits of the assignment,

which law was valid at the time, as no bankruptcy act was in effect when the assignment was executed in 1809, held:

> "In England such an assignment could not be supported because it is by law an act of bankruptcy, and the law takes possession of a bankrupt's estate and disposes of it, but in the United States, where no bankruptcy law exists for setting aside a deed of assignment made for the transfer of a debtor's estate for the payment of his debts, the preference given in this deed in favor of creditors, though liable to abuse and perhaps serious objection in the exercise of a power resulting from the ownership of property which the law has not yet restrained, it cannot be treated as a fraud."

The Supreme Court of the State of Washington, under its assignment law, which is, in effect, a bankruptcy law, which was adopted in 1890, Remington's Compiled Statutes, Sections 1086 to 1103, inclusive, in the case of Jenson-King-Bird Co. v. Williams, 35 Wash. 161, held that such assignment law was valid and not suspended or superseded as to the discharge of the debtor by the passage of the National Bankruptcy Act of July 1, 1898.

In a recent case in Washington, however, in the Superior Court of King County, Judge Wm. J. Steinert, in a written opinion, held that the discharge feature of the state act was superseded and suspended by the Federal Bankruptcy Act, and in such opinion says:

> "A general assignment for the benefit of creditors was recognized at common law, and, of course, is a

right incident to and accompanying the acquisition, ownership and control of property. But the common law contains no discharge feature; that was the thing which the state law, and later the national law, effected."

And it was for the purpose of providing for such discharge that the various state insolvency statutes were passed prior to the enactment of the National Bankruptcy Act on July 1, 1898.

In this regard it may be well to consider a definition of a bankruptcy or insolvency law.

This Court, in the case of Ogden v. Saunders, 12 Wheaton 213, says:

"Every state law is a bankruptcy law in substance and effect, which causes to be distributed by a tribunal the property of a debtor among his creditors, and it is especially such if it causes a debtor to be discharged from his contracts so far as it can do so."

In the case of Nelson v. Carland, 1 Howard 265, this Court says in reference to a bankruptcy act:

"When the United States statute is also an insolvency law acting upon the same person and cases as the state insolvency law, the latter is suspended when the United States statute goes into operation."

The Court of Appeals of New York, in the case of Kunzler v. Kohaus, 5 Hill (N. Y.) 317, says:

> "Under the Constitution of the United States the Federal Government has power to pass a uniform bankrupt law. The meaning of bankrupt, as used in the Constitution, was not the technical early English one, but was commensurate with insolvent."

The present bankruptcy law is both a bankrupt law and an insolvent law. Under the present act one of the earliest decisions passing upon the question of the effect of the Bankruptcy Act upon an assignment or insolvent law of a state was the case of Ketchum v. McNamara, 72 Conn. 709. In that case Judge Baldwin held:

> "A general assignment made under the law of Connecticut, which was in effect an insolvency law, was absolutely void because the Bankruptcy Act of 1898 made the making of a general assignment an act of bankruptcy."

And in such case he called attention to what he considered an inconsistency in the opinion handed down by a divided Court in the case of Boese v. King, 108 U. S. 379.

However, this Court, in the case of Stellwagen v. Clum, 245 U. S. 605, at pages 615 and 616, says:

> "It is settled that a state may not pass an insolvency law which provides for a discharge of a debtor from his obligations which shall have the effect

of a bankrupt's discharge as to creditors in other states, and this, although no general Federal Bankruptcy Act is in effect. And while it is not necessary to decide that there may not be state insolvency laws which are suspended, although not providing for a discharge of indebtedness, although not all of the cases lay tress upon the fact that one of the principal requisites of a bankruptcy law is for the benefit of the debtor in that it discharges his future acquired property from the obligations of existing debts."

In that case, however, the Ohio statute was under consideration, and it did not provide for the discharge of a debtor, and the Court held that the rights given under the Ohio assignment law for the recovery of fraudulently conveyed property were not suspended or superseded by the Federal Bankruptcy Act, but that same were taken into consideration under Sections 67 and 70 of the Bankruptcy Act.

The Supreme Court of Wisconsin in the case of In re Tarnowsky, 210 N. W. 836, has expressly held that the discharge feature of the Wisconsin statute is suspended.

The Supreme Court of South Carolina in the case of Rayburn v. Reid, 138 S. E. 294, has held to the same effect.

It now appears, however, that Arkansas, Georgia, Washington and Texas hold that unless bankruptcy actually intervenes and an adjudication of bankruptcy be made, that the state insolvency laws are in full force and effect, and a creditor of a foreign state, while his debt may not

be discharged, at the same time, if he participates in and obtains any part of the bankrupt's property, must discharge him from his debts, so that a club is held over the head of the foreign creditor, and in order to participate in an insolvent's estate he must subscribe to the state law on the subject, where his debt is insufficient in amount for him to file a petition in bankruptcy, in order for him to receive his pro rata part of such estate.

This is so repugnant to counsel's idea of the purpose of the National Bankruptcy Act and the effect of the constitutional provision, that we cannot conceive how it can be the law of the land, and we respectfully submit that upon a careful consideration of this case that same should be reversed and remanded to the state court with appropriate instructions, and the Court settle the law for all times on this subject.

Respectfully submitted,

STREET & BURNSIDE,
J. D. WILLIAMSON,
Counsel for Plaintiff in Error.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 12

INTERNATIONAL SHOE COMPANY, PLAINTIFF IN ERROR,

vs.

I. PINCUS ET AL., DEFENDANTS IN ERROR.

ON WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

ADDITIONAL BRIEF OF PLAINTIFF IN ERROR ON THE SUBJECT OF ASSIGNMENTS AT COMMON LAW.

To the Honorable Judges of said Court:

It is conceded that several of the States of the United States have held that assignments containing stipulations for releases of the debtor are valid. Other States, and I believe a majority of the States of the Union, hold to the contrary.

As to whether or not an assignment containing a stipulation for a release was valid and effective at

common law seems to be a question of grave doubt even in the English courts.

The English statute declaring conveyances void that were made by a debtor to hinder, delay or defraud his creditors was passed during the reign of Queen Elizabeth in 1571, and is referred to as the Statute of Thirteenth Elizabeth, Chapter 5, and is found in Chitty's English Statutes, Vol. 2, at page 728.

Prior to the reign of Queen Elizabeth, the first bankruptcy act in England was passed during the reign of Henry VIII, being Statutes 34 and 35 of Henry Eighth, Chapter 4. These statutes were directed mainly against the criminal frauds of traders and were considered criminal laws. Bankruptcy laws as now understood were unknown to the common law.

The Bankruptcy Act of Henry Eighth was subsequently amended, or consolidated, by Act 6 George Fourth, Chapter 16, and many important alterations were introduced into the subject of bankruptcy. A subsequent statute, 1st and 2d William Fourth, Chapter 4, changed the mode of proceeding and other important alterations were introduced. This was followed by the 5th and 6th William Fourth, Chapter 29, and in 1869 there was a complete revision of the bankruptcy laws of England and they were then codified.

Hence, there is a question of somewhat vital importance upon the subject of a fraudulent conveyance at common law. A fraudulent conveyance for the purpose of placing the property beyond the reach of creditors, such as an assignment, created a trust and such trust property could only be reached in equity and, if

found to be a fraud, the assignment set aside. As has been said by Mr. Blackstone, "All deceitful practices and artful devices contrary to the plain rules of common honesty are frauds at common law and punishable there; but for some frauds or deceits there is no remedy at law, in which cases they are cognizable in equity as one of its chief branches of original jurisdiction." Thus the setting aside of a fraudulent conveyance is a proceeding in equity, whereas a fraud involving moral turpitude was contrary to the plain rules of common law and punishable as a crime.

It may be well to consider assignments that were regarded as being contrary to the early bankruptcy acts and held void because at the time the bankruptcy act was passed the making of a general assignment was not an act of bankruptcy and transactions were not set aside which were valid at law because of the bankruptcy of the debtor; except when a preference after insolvency.

In the case of Small *vs.* Oudley, 2 Peer Weems, 427 (24 English Reports Reprint, p. 799), decided in 1727, the court held that a deed could not be fraudulent in equity which would not amount to an act of bankruptcy at law.

In the case of Worseley *vs.* DeMatto, 1st Burrow 475 (97 English Reports Reprint, p. 407), decided February 7, 1758, Lord Mansfield held that an assignment of all the bankrupt's effects, though a fair transaction between the parties and for a good and valuable consideration, was nevertheless fraudulent in respect of the other creditors.

In the case of Harman *vs.* Fisher, 1 Cowper 117 (98 English Reports Reprint, p. 998), decided June 14, 1774, Lord Mansfield, in delivering the opinion of the court, at page 123, says: "There has been much argument upon a general question whether a trader in contemplation of an act of bankruptcy can give a preference to a bona fide creditor." Perhaps the stating it as a general question involves a great impropriety, because no trader can do an act of trade contrary to the spirit of the bankruptcy law and of injury to his creditors. He can not assign his effects to all of his other creditors in exclusion of one whom he thinks dishonest or unjust, nor even to be equally divided amongst all of his creditors, because he can not take his estate out of that management which the law puts it into. If any act of this sort is done by deed it is not only void, but in itself an act of bankruptcy from the date of the deed. If without deed, it is void in respect of those whom it prejudices.

In the case of Pickstock *vs.* Lyster, 3 Maule & Selwyn, 371 (105 English Reports Reprint, p. 650), decided June 23, 1815, which case is referred to often as the basis of all authority that a deed of assignment for the equal benefit of creditors without preferences was not void under the Statute of Thirteenth Elizabeth, Chapter 5, Lord Ellenborough held that the deed of assignment, being for the equal benefit of all creditors and a release clause having been stricken out before its execution, was valid and did not violate the Statute of Thirteenth Elizabeth, Chapter 5.

In the case of Eckhart *vs.* Wilson, 4 East 230 (102 English Reports Reprint 1311), decided February 5,

1799, which was an action upon promises to which the defendant plead in bar the bankruptcy of A. G. Eckhart, one of the plaintiffs, and an assignment under it of all of his effects for the benefit of all his creditors, the plaintiff replied that, before bankruptcy of said Eckhart, he, with the other plaintiffs who were partners in trade, by a deed of assignment, after reciting that they were indebted and unable to discharge their debts and carry on their trade, assigned to certain trustees all their stock in trade, debts and effects for the benefit of all their creditors who should execute the said deed. The court held "That an assignment by deed by traders of all their effects was not only fraudulent and void as against those creditors who did not concur but was an act of bankruptcy."

Subsequent to the decision of Eckhart *vs.* Wilson and Pickstock *vs.* Lyster, the English courts, on June 18, 1816, in the case of the King (in aid of Braddock) *vs.* Watson, 3 Price 6 (146 English Reports Reprint, p. 1741), wherein an assignment containing a clause requiring beneficiaries who accepted its benefits to release the debtor, said:

> "There is certainly no fraud in this case affecting the assignment which has been made for the equal benefit of creditors, Braddock as well as the rest, nor is any of such inference to be drawn from the facts arrived in the replication. It would have been a different thing if there had been a commission in bankruptcy sued out and the property had been divested. This is a very common arrangement which it would be very injurious to disturb where there has been no commission."

This assignment was attacked under the Statute of Thirteenth Elizabeth, and in the interim the bankruptcy law had been amended, but so far as the decision goes, in later cases it has been said that the decision should not be regarded as an authority as it was without reason.

In order to obtain further English decisions upon the subject I investigated the holdings of the courts of Canada and find that the courts of Canada have held, with one exception, such assignments to be void and contrary to the Statute of Thirteenth Elizabeth.

In the case of Whitman vs. The Union Bank of Halifax, 16 Sup. Ct. of Canada, 410, where an assignment provided one set of creditors was to be paid in full and a second set pro rata, but that the assignor was to be released by the acceptance of the benefits, the court held that such assignment was void under the Statute of Thirteenth Elizabeth, Chapter 5. That case was decided subsequent to the case of Bank of Toronto vs. Eccles, 10 Upper Canada Common Pleas, 282, in which a contrary rule was reached, but that case based its decision upon the case of Pickstock vs. Lyster, in which the question of release was not in issue. Hence it did not determine that the assignment was void on account of such provision.

In the later case of Darling vs. McIntyre, 19 Upper Canada Queens Bench, 154, the court held that an assignment excluding all creditors from participating who would not agree to release the debtor in full could not be held to be a conveyance for the purpose of paying the creditors of the debtor their just debts, and

that such an assignment was void under 22d Victoria, Chapter 96, Section 19, and referred to that act in connection with Thirteenth Elizabeth, Chapter 5, Sec. 6.

In the case of Crapper *vs.* Patterson, 19 Upper Canada Queens Bench, 160, the court held that an assignment containing a clause requiring the creditors to release the debtor was void under the Statute of Thirteenth Elizabeth, Chapter 5.

These decisions bring us back to the question of the common law and what is the common law as applied to the United States or to the several States. Is it the general law of England, as evidenced by the decisions of her courts at the time of the formation of this Government? If it is, then at the time of the formation of this Government such an assignment under the English law was void because the trend of decisions up to that time had declared it to be; or, at least, the question was an unsettled one in England, and now the courts hold such assignments void.

Mr. Waite, in his work on Fraudulent Conveyances, 2d Ed., Sec. 328, says:

> "Assignments exacting releases from creditors are looked upon with great disfavor by the courts. The law seems to be settled that assignments will be declared to be fraudulent and void if creditors are preferred on condition of their subsequently executing releases of their respective demands. The reason is obvious. It is a clear attempt on the part of the debtor to coerce his creditors to accede to his terms, and a withholding of his property from them unless they do so accede. As was ob-

served in Hyslop *vs.* Clarke: 'It does not actually give a preference, but is, in effect, an attempt on the part of the debtors to place their property out of the reach of their creditors, and to retain the power to give such preference at some future period. If they can keep it locked up in this way in the hands of the trustees, and set their creditors at defiance, for three months, they may do so for three years, or for any indefinite period.' The right of giving preferences can not be so exercised as to secure to the debtor the future control of the assigned property or its proceeds, as continuing the business in another's name."

Mr. Burrell, in his work on Assignments, 6th Ed., Sec. 163, says:

"It has been considered that the weight of American authority was in favor of the validity of these stipulations upon general principles, and the decision in Halsey *vs.* Whitney, 4 Mason, 230, has been relied on as establishing such a proposition. The only American authorities examined in that case were the decisions of the courts in Massachusetts, New York and Pennsylvania. The decisions in Massachusetts were admitted by the learned judge who delivered the opinion of the court to leave the question *in equilibrio*, and the law was deemed to be settled in that State only by professional opinion, usage and practice. The New York decisions were considered as inapplicable on the ground that they did not 'turn upon the naked point of a release, but upon that as incorporated into a peculiar trust'; and, so far as authority was concerned, the case appears to have been de-

cided on the strength of the Pennsylvania case of Lippincott *vs.* Barker, the case of Pierpont *vs.* Lord, in the circuit court, and the English Exchequer case of The King *vs.* Watson.

"In Lippincott *vs.* Barker, 2 Binn 174 (Penn.), it will be seen that the assignment had been formally accepted by the great majority of the creditors before it was acted upon, and Chief Justice Tilghman, in delivering his opinion, expressly confined it to the circumstances of that particular case, observing that there were 'many and strong objections to deeds of assignment made without the privity of the creditors and excluding all who do not execute releases.' The remaining American case of Pierpont *vs.* Lord (or Graham) does not appear to have been very closely examined, and is in fact pronounced to be 'not in point, but probably decided' on the general principle.' The English Exchequer case of The King *vs.* Watson was held to be decisive.

"The weight of Mr. Justice Story's decision in Halsey *vs.* Whitney is considerably affected by his own free admission that if the question had been new, and many estates had not been passed upon the faith of such assignments, the strong inclination of his own mind would have been against their validity. The decision itself has been critically examined and its soundness upon principle questioned in several American cases.

"In the New York case of Grover *vs.* Wakeman, 11 Wendell, 187, where the decision was fully discussed, and the English and American decisions reviewed, Mr. Justice Sutherland considered it doubtful on which side the preponderance of authority lay; but the decision in that

case, and in the subsequent cases in the same State, already noticed, have clearly settled the rule against the validity of the stipulations in question; and the decisions in Ohio, Missouri, Alabama, Mississippi and Georgia have thrown great weight into the same scale. See also Baldwin *vs.* Peet, 22 Texas, 708.

"In Brashear *vs.* West, 7 Pet., 608, it is true, the Supreme Court of the United States sustained an assignment containing a stipulation for a release; but this was done with very great reluctance, and only because the court felt itself bound by the construction which had been previously given by the courts of Pennsylvania to the statute of that State. The assignment on which the question arose had been executed in Pennsylvania by a citizen of that State, and the court observed that its validity appeared never to have been questioned there. But the inclination of the court is pretty clearly indicated by the expression of Chief Justice Marshall: 'We are far from being satisfied that upon general principles such a deed ought to be sustained.'

"In the case of Marsh *vs.* Bennett, 5 McLean, 117, in the Circuit Court of the United States for the District of Michigan (June, 1850), the question as to the validity of these stipulations was not formally presented, but the court made use of the reasoning of the adverse cases in condemning a coercive stipulation of another kind. The opinion of Chief Justice Marshall in Brashear *vs.* West was quoted, and the ground upon which the decision was placed referred to, with the observation that 'The argument and expressed opinion of the Chief Justice on the point considered is adverse to the decision pronounced.' After remarking that

the question was still an open one in Michigan, the court proceeded to quote the opinion and decision of Mr. Justice Story in Halsey *vs.* Whitney, and seem to adopt his conclusion that the weight of authority was in favor of these stipulations, at least as law for the case when the question should arise.

"In the case of Stewart *vs.* Spencer, 1 Curt., 157, in the Circuit Court for the District of Rhode Island (June, 1852), the assignment contained a stipulation for a release as a condition of preference, but it had been made by a debtor who afterwards absconded to a foreign country, carrying with him a large sum of money. On this latter ground, and this only, the assignment was held fraudulent and void as to creditors. The court, following the law of Rhode Island, assumed to be settled law for the case, that a debtor might stipulate for a release by which his future earnings would be discharged; and cited Brashear *vs.* West and Halsey *vs.* Whitney; although, if such a stipulation was designed to be an instrument of fraud, it would void the deed.

"In his Commentaries on Equity Jurisprudence (Vol. II, Ch. 28, Sec. 1036) Mr. Justice Story appears to have still inclined in favor of his conclusion in Halsey *vs.* Whitney; but his language is not more confident than in that case, and the authorities cited are few. Taking into consideration the opinion expressed by Chief Justice Marshall in Brashear *vs.* West, 7 Pet., 608, it seems probable that should a case be brought before the Supreme Court of the United States which could be decided on general principles and free from the control-

ling influence of State construction, the decision would be against the right to stipulate."

Counsel respectfully submits that this case should be decided by this Court upon general principles and free from the controlling influence of State construction, because the Supreme Court of the State of Arkansas, in unmeasured terms, has said in the following cases:

Collier *vs.* Davis, 47 Ark., 367;
Lowenstein *vs.* Finney, 54 Ark., 124;
Nelson *vs.* Harper, 122 Ark., 39,

that an assignment which provides that a creditor in order to receive his share of the proceeds of assigned property is required to release or extinguish the balance of his claim, is a fraudulent conveyance.

We therefore submit that this Court should pass upon the question and decide it on general principles and determine the law of the land in reference to assignments made under State statutes which are in effect insolvency laws and which provide for a release of the debtor from a creditor who participates in such assignment, and hold such statutes to be void, and that same are suspended or avoided by the bankruptcy act.

Respectfully submitted,

J. D. WILLIAMSON,
Attorney for International Shoe Company,
Plaintiff in Error.

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IN THE

SUPREME COURT

OF THE UNITED STATES.

October Term, A. D. 1927.

NO. 401.

INTERNATIONAL SHOE COMPANY,

Plaintiff in Error.

Vs.

I. PINKUS, GEORGE FRANKLIN,
SAM DESSENT, et al Defendants in Error.

In Error to the Supreme Court of the State of Arkansas

BRIEF FOR DEFENDANTS IN ERROR.

TO THE HONORABLE JUDGES OF SAID COURT:

THE ISSUE.

Are the State Courts of Arkansas prohibited from assuming jurisdiction and enforcing the Ark-

ansas Insolvency Law in cases where the Federal Bankruptcy court has not, and can not, assume jurisdiction?

As is pointed out in the first assignment of error urged by the plaintiff in error, the Supreme Court of Arkansas held that the State Insolvency Laws are still in full force and effect "so far as the instant case is concerned." While the argument may involve much general discussion of the general rules applicable to the abstract question of when State insolvency laws are suspended and superseded by the acts of Congress relating to bankruptcy, in the very beginning we submit that this court will determine only whether or not the state courts had, and have, jurisdiction of the particular facts in the case at bar.

STATEMENT OF CASE.

We submit that the plaintiff in error has failed to present a case affirmatively shown to be within the jurisdiction of any Federal bankruptcy court.

Voluntary proceeding under the Federal Bankruptcy law was not available in the instant case to the debtor, I. Pinkus, because of the provision that a discharge in bankruptcy shall not be

granted to a bankrupt under voluntary proceedings within six years after a former discharge in bankruptcy. *United States Code*, Title 11 (Bankruptcy), Sec. 32, (b) (5); *Sec. 9598 United States Compiled Statutes of 1918 b* (5).

The brief of appellees in the Arkansas Supreme court had attached to it a certified copy of the discharge of I. Pinkus in bankruptcy by a Federal court on January 1st, 1923. This is doubtless why the plaintiff in error was unable to affirmatively show that the debtor, I. Pinkus, was subject to the jurisdiction of the Federal Bankruptcy Court on voluntary petition.

Involuntary proceedings necessary to give jurisdiction under the Federal Bankruptcy law were impossible because no three creditors could be found whose claims aggregated as much as $500.00 who were willing to join in the necessary jurisdictional petition. *United States Code*, Title 11 (Bankruptcy, Sec. 95 (b), *Section 9643 (b) United States Compiled Statute of 1918*, page 1559.

The plaintiff in error concedes that it was powerless to invoke the jurisdiction of a Federal Bankruptcy Court. We quote from page 25 of its brief as follows:

"The plaintiff in error could not throw Pinkus into bankruptcy. The record discloses that there were more than twelve creditors. The claim of plaintiff in error is less than $500.00, and it cannot be assumed that it could have obtained the co-operation and assistance of two other claimants, whose joint debts would have sufficed to give the Federal Bankruptcy Court jurisdiction of an involuntary petition."

On the contrary, we understand that all of the other creditors of I. Pinkus, by their voluntary stipulations filed in the State court, refused to invoke the jurisdiction of a Federal Bankruptcy Court.

We therefore submit that neither the persons nor the subject matter involved in the case at bar are, nor were, within the purview of the National Bankruptcy Act in the sense that any Federal court of bankruptcy could assume jurisdiction. This being true, the decision of the Arkansas Supreme Court is clearly correct.

REPLY BRIEF AND ARGUMENT

It is conceded by plaintiff in error that this Honorable Court has never determined the exact question presented. Hence, we anticipate that decision will be reached by the rule of reason and

sound legal logic, rather than by a search for precedents among the innumerable confusing, conflicting decisions of the various State courts and lower Federal courts.

In the cases cited by plaintiff in error will be found many loose general expressions of various courts which are apparently favorable to its contention, but upon examination of the facts in the particular cases it will be found in probably most instances such general expressions are merely obiter dicta. Therefore, while we shall follow the example of plaintiff in error by citing various decisions, we do not understand that any of them are authorities which bind this court in determining this question as a case of first impression. Reason and sound legal logic support the decision of the Arkansas Supreme Court.

I

The Federal Bankruptcy Act itself refutes the position of plaintiff in error.

(a) Beginning with the first section of the bankruptcy Act we find that I. Pinkus is not a "bankrupt." " 'Bankrupt' shall include a person against whom an involuntary petition *** has been filed, or who has filed a voluntary petition, or who

has been adjudged a bankrupt." *United States Code*, Title 11 (Bankruptcy) Sec. 1, 1 Fed. Stat. Ann. (2nd Ed.) p. 510, Sec. 1 a (4).

In the instant case no petition has been filed; and, as hereinbefore shown, under the peculiar facts of this case, no petition could be filed. Hence, I. Pinkus can never become a "bankrupt" under the Federal law until there has been some change of facts and circumstances.

(b) In the case at bar there are even no "creditors" within the meaning of the Federal Bankruptcy Act. "'Creditor' shall include anyone who owns a demand or claim *provable in bankruptcy*." All of the creditors of I. Pinkus with the single exception of the plaintiff in error (as we understand) have voluntarily submitted to the jurisdiction of the Arkansas State Courts, and have voluntarily filed written stipulations pursuant to the Arkansas insolvency laws which leave them with no debt or claim now "provable in bankruptcy". The plaintiff in error concedes that it holds no debt "provable in bankruptcy" because it is less than $500.00, and it cannot obtain the co-operation and assistance of any two other creditors.

This general limitation of the application of the Federal Bankrupt Act to facts and cases which

can, and do, actually invoke the jurisdiction of a Federal bankruptcy court runs through all of the definitions and provisions of the Act of Congress.

(c) The jurisdiction of State courts, and the legal right of State courts to act in the premises until the jurisdiction of a Federal court of bankruptcy is invoked, is expressly recognized by Congress.

"Acts of bankruptcy by a person shall consist of his having *** (4) made a general assignment for the benefit of his creditors, or, being insolvent, applied for a receiver or trustee for his property, or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a State ***".

United States Code, Title 11, Bankruptcy, Sec. 21 a (4).

1 Fed. Stat. Ann. (2d Ed.), pp. 555-556, Sec. 3 a (4), an cases cited in annotation note.

Plaintiff in error contends that any such order or decree of a State court is utterly null and void. We submit that it is unreasonable to assume that Congress would declare an Act which is utterly null and void, and without any force or effect for any purpose, to be an Act of bankruptcy. On the contrary, Congress plainly *assumes the right* of a State Court to appoint a receiver or trustee; sub-

ject, of course, to the possible later interference of federal bankruptcy proceedings. The appointment of a trustee by a State court under State insolvency laws is linked directly by Congress with the act of an insolvent creditor executing a general assignment for the benefit of his creditors. If the appointment of a trustee by a State court is utterly void because of this particular section of the bankrupty act, then by the same token every general assignment for the benefit of the creditors is likewise void. Even plaintiff in error concedes that a general assignment is not void, but merely voidable, until jurisdiction of a Federal court of bankruptcy has been invoked. Consistency should impel plaintiff in error to concede that likewise the action of a State court in appointing a trustee is not void, but voidable when the jurisdiction of a Federal Bankruptcy Court has been actually invoked.

In this connection, we call the court's attention to the fact that the Arkansas Supreme Court has expressly construed the Arkansas Insolvency law to be in substance no more than a general assignment for the benefit of creditors. The decision in the case at bar expressly so states:

"The Arkansas statute, with reference to insolvent debtors, simply authorizes the debtor to go

in the Chancery court and ask for the appointment of a receiver to take charge of his propery and distribute the same among his creditors. The effect of this is the same as if the debtor had made an assignment of his property for the benefit of his creditors, and this court has repeatedly held that a debtor may make an asignment of all his property but that he cannot reserve any to himself, except, of course, the exemptions he is allowed by the Constitution." (Rec. p. 27).

This court will follow the construction of the Arkansas Supreme Court as to the meaning and and effect of the Arkansas Statutes.

II

ARKANSAS DECISIONS. Plaintiff in error assumes that the decision of the Arkansas Supreme Court in the case at bar is in conflict with its own earlier decisions. If so, this would only mean that the Supreme Court has overruled its earlier decisions, a matter in which this court cannot be interested. For the purpose of this case, this court will take this decision of the Arkansas Supreme Court (Rec. pp. 26-30) as being the correct expression of the present construction and application of the State law involved.

We submit that the Arkansas Supreme Court has arrived at a clear and correct statement of the

particular point of law presented by this appeal, and the opinion of the seven Justices as written by Justice Mehaffy in this case will meet the approval of this court.

1. *Hickman v. Parlin-Orendorff Co.*, 88 Ark. 519, seems to be the first decision of the Arkansas Supreme Court as to the effect of the Federal Bankruptcy Act of July 1, 1898, on the State Insolvency Act of June 26, 1897. The court correctly announced as a principle of law:

"The Insolvency laws of Arkansas were suspended by the Bankruptcy Act of Congress of July 1, 1898, and since that date have remained and are now in abeyance, *in so far as they relate to the same subject-matter and effect the same persons as the act of Congress, which is still in force.* (Cases cited)." 88 Ark. at p. 520.

It would seem that in that particular case of first impression that the court did not apply that part of the statement which we have italicized, and hastily assumed that in the case before it the Federal Bankruptcy Act did have jurisdiction over the same subject matter and the same persons as were in the State court; but the record before the court in that case may have presented facts which the short opinion does not reflect. We have shown that in the case at bar there has been, and cannot

be under the present facts, any jurisdiction in the Federal Bankruptcy Court over either the subject matter or persons here involved.

However, if this first decision was at all misleading, it was corrected in the next decision of the court in the case of

2. *Roberts Cotton Oil Co. v. F. E. Morse & Co.*, 97 Ark. 513. This case explains and distinguishes, if it does not modify, the *Hickman v. Parlin-Orendorff Co.*, supra, decision, not only correctly stating the principle of law involved, but also making a correct application of that principle to the facts then before the court.

In this *Roberts Cotton Oil Co.* case, the insolvent debtor "was denied the benefit of the Bankruptcy act except by involuntary proceedings upon petition of three of its creditors,"—just, as in the case at bar, I. Pinkus was denied the benefit of the bankruptcy act except by involuntary proceedings upon petition of three of his creditors because of his prior discharge in bankruptcy within six years. Therefore, the reasoning of the court in its opinion is applicable in principle to the facts of the case at bar. We quote as follows:

"This insolvent Company and its stockholders knew of its condition, and could not invoke the benefit of the bankruptcy law to preserve its estate and protect its creditors, and for this purpose resorted to the State tribunal, which had plenary powers unless their execution was superseded by the bankruptcy law. It was insolvent, but could not set in operation the bankruptcy law, and must either flounder along in an attempt to do business until it was attacked by creditors, or resort, as it did, to the tribunal of its residence. The Chancery court appointed receivers to collect and preserve the estate and protect the creditors, *which it had the right to do unless and until the bankruptcy law was set in motion against the company.* (See cases cited)."

"Having such right, the orders of the court and the actions of the receivers in pursuance thereof were valid as against all persons, unless it be the receivers and trustees in bankruptcy; and, although as to them such prior action of the receivers of the State court might be avoidable, it would not and could not be void upon a collateral attack of a stranger to both proceedings. When the proceedings in bankruptcy were instituted, it displaced those of the State court, and terminated its jurisdiction, and, as was said In re *Watts v Sachs*, 190 U. S. 1: "It has already been assumed that the bankruptcy proceedings operated to suspend the further administration of the insolvent's estate in the State court, but it remained for the State court to transfer the assets, settle the accounts of its receiver and close its connection with the matter. Errors, if any, committed in so doing

could be rectified in due course and in the designated way.' "

"The case of *Hickman v. Parlin-Orendorff Co.*, 88 Ark. 519, in which it was said: 'The insolvency laws of Arkansas were suspended by the bankruptcy act of Congress of July 1, 1898, and since that date have remained and are now in abeyance, in so far as they relate to the same subject-matter and affect the same persons as the act of Congress, which is still in force', is not in conflict with the views herein expressed, since it was expressly said that such laws were suspended only in so far as they relate to the same subject-matter and affect the same persons as the act of Congress;' and that was a case of an individual to whom the bankruptcy law was applicable." 97 Ark. at pp. 520-521.

3. *Baxter County Bank v. Copeland*, 114 Ark. 310, correctly states the same principle of law, but does seem in the second paragraph of the opinion (114 Ark. at p. 322) to make an erroneous application of that principle. However this second paragraph of the opinion is obiter dicta because the case was adjudicated on its merits, and regardless of the loose general expressions of the court in this second paragraph. If this obiter dicta is misleading, it is corrected by the Arkansas Supreme Court by properly applying the principle of law involved in the instant case, and in its next decision

4. In *Morgan v. State*, 154 Ark. 273, the court again correctly declares the principle of law involved, and correctly applies it to the facts before it. We quote from the opinion:

"In construing this act in the case of *In re Watts and Sachs, petitioners*, 190 U. S. p. 1, the court held that the operation of the bankruptcy laws of the United States cannot be defeated by insolvent corporations applying to be wound up under State statutes. The court said the bankruptcy law is paramount and the jurisdiction of the Federal courts in bankruptcy, *when properly invoked* in the administration of the affairs of insolvent persons and corporations, is essentially exclusive." 154 Ark. at pp. 278-279.

We call especial attention to the very definite limitation which we have italicized in the above quotation, that the State insolvency laws are not suspended or superseded until the jurisdiction of the Federal Courts in bankruptcy has been *properly invoked*. The record in the cast at bar is that such Federal jurisdiction not only has not been invoked, but plaintiff in error concedes that it could not be invoked. Hence, the necessary resort of the plaintiff in error to an attempted relief in the State courts under the State law.

5. In *Shamis v. Rice-Stix Dry Goods Co.*, 155 Ark. 352, the Supreme Court of Arkansas recites its understanding as follows:

"The bankruptcy law of the United States is paramount, and the jurisdiction of the Federal courts in bankruptcy, *when properly invoked* in the administration of the affairs of insolvent persons and corporations, is essentially exclusive. (Former decisions cited)."

"Therefore, when involuntary proceedings in bankruptcy were filed in the Federal bankruptcy court against T. A. Shamis, his estate must be administered and the distribution of his assets made by that court, and the general assignment which he had previously made for the benefit of his creditors was necessarily rendered null and void." 155 Ark. pp. 353-354.

By parity of reason and principle, the same rule of practice is correct where the insolvent debtor has made an assignment to a trustee of a State court as in the case of a general assignment made by him.

6. The next statement by the Supreme Court of Arkansas is in the case at bar—*International Shoe Company v. Pinkus*, decided March 21, 1927, 29 The Law Reporter 351, (Record 26-30), which, we submit, corectly states the law in the syllabii, as follows:

"While the filing by an insolvent debtor of a petition in the Chancery court for the appointment of a receiver, or the making of an assignment for the benefit of creditors, is an act of bankruptcy, that does not of itself place one within the jurisdiction of the Federal court, but there must have been a compliance with the procedure prescribed by the Federal law, either by way of a voluntary petition on the part of the debtor, or a petition by the creditors, as provided by the bankruptcy act."

——"The fact that an insolvent debtor may go into the bankruptcy court, or may be forced by the petition of creditors to go into that court, does not prevent him from disposing of his property for the benefit of all of his creditors, unless the jurisdiction of the bankruptcy court is properly invoked, and, unless and until the jurisdiction of that court is properly invoked, the voluntary agreement of the creditors is binding." 29 The Law Reporter (Ark.) 851.

We submit that this a clear and correct statement of the law which will meet the approval of this court; and if any earlier decision of the Arkansas Supreme Court may be found to embody loose expressions in conflict with the statement just quoted, then such earlier decisions are modified and overruled to the extent of their conflict with this later expression of the Arkansas Supreme Court.

7. In *N. Friedman & Sons Cloak Co. v. Higgins*, decided by the Arkansas Supreme Court on No-

vember 28, 1927, 33 The Law Reporter (Ark.) 151, we find the last statement and final decision of our court, approving and following the case at bar. The syllabii correctly summarize the decision as follows:

"The Federal Bankruptcy Act of 1898 suspended and put in abeyance the insolvent statutes, Crawford & Moses' Digest, Sections 5885-5893, providing for the distribution of the assets of an insolvent debtor among his creditors, *so far as they relate to the same subject matter and affect the same persons.*"

"A proceeding by an insolvent debtor for the disposition of his assets under the laws of the State, through the chancery court, although an act of bankruptcy, is binding and effective, *unless and until the jurisdiction of the Federal court is properly invoked.*" 33 The Law Reporter (Ark.) 151.

The general statement of Judge Trieber in the case of *Weedman Stave Co.*, 199 Fed. 951, that the Arkansas Insolvency Law (Plaintiff's brief pp. 10-14), is suspended and superseded by the Federal Bankruptcy act, is clearly too broad a statement to be true. The statement is obiter dictum because in the *Weedman Stave Co.* case (199 Fed. 951), the jurisdiction of the Federal Bankruptcy court had been invoked. The decision was right in that case.

It will be noted that the Arkansas Insolvency Act applies to *all* insolvent debtors. Its opening words are (Crawford & Moses Digest of the Statutes of Arkansas): "Sec. 5885. *Any insolvent debtor* may file in the chancery court of the county in which he resides a complaint, etc."

It is unnecessary to point out to this court the numerous persons and circumstances of insolvent debtors to which the Federal Bankruptcy Act does not apply. It is also unnecessary to cite further authority at this point to the effect that the State insolvency laws are never suspended or superseded where they do not conflict with the Federal Bankruptcy Act. Hence, the books are full of decisions of insolvent actions in State courts where the Federal Bankrupt Act does not and cannot apply.

III

OTHER DECISIONS. Many of the cases cited by plaintiff in error may be distinguished from the facts in the case at bar in that the decision in the particular case was right because there was an actual conflict between the authority of the Federal Bankruptcy court properly invoked and the State court undertaking to enforce the State Insolvency Law on the same subject matter, and effect-

ing the same persons. Some few of the decisions do undertake to extend the application of the Federal Bankruptcy law to the point of suspending a State Insolvency Law even though the jurisdiction of the Federal Bankruptcy Court has not been invoked. In any such cases where the jurisdiction of the federal bankruptcy court could not be invoked (as in the case at bar), then clearly such decisions are erroneous.

In *Lace v. Smith*, 34 R. I. 1, Ann. Cas. 1913 E. p. 945, is a well reasoned opinion and exposes the unsound logic of the position of plaintiff in error, and refutes the reasoning of the authorities in point on which plaintiff in error relies, especially the case of *Potts v. Smith Mfg. Co.*, 25 Pa. Super. Ct. 206, which plaintiff in error stresses. This case of *Lace v. Smith* is directly in point and holds (quoting the syllabus):

"The power of Congress to establish uniform bankruptcy laws, *** is exclusive only to the extent that it is *actually exercised*, so that the states may enact bankrupt laws to cover matters not regulated by Act of Congress." Ann. Cass. 1913 E. p. 945.

See also *Ogden v. Saunders*, 12 Wheat. 216, 6 U. S. L. Ed. 606.

R. H. Herron Co. v. Superior Court, 136 Cal. 279, 89 Am. St. Rep. 124.

Old Town Bank v. McCormick, 96 Md. 341, 94 Am. St. Rep. 577.

Murphy v. Penniman, 105 Md. 452, 121 Am. St. Rep. 584.

7 Corpus Juris, pp. 23-24, Sec. 10, and cases cited.

5 Ruling Case Law, Sec. 2, pp. 105-106, and cases cited.

"The State Insolvency Law is suspended only as to those who can, without their consent, be made subject to the provisions of the Bankruptcy Act." *1 Fed. Stat. Ann.* (2d Ed.) at p. 505, and cases cited.

"It is only where the Bankruptcy Law covers and supplies that which is undertaken to be disposed of by the State Law that the latter must give way."

1 Fed. Stat. Ann. (2d. ed.) pp. 505-506.

Johnson v. Crawford, 184 Fed. 761.

2. *Patty, Joiner & Fabianic Co. v. R. B. Cummins*, 93 Tex. 508, in a well reasoned opinion, holds (quoting syllabus):

"In so far as an insolvent law of a State provides for a release by the creditors it is suspended by a bankrupt law of the United States, but if the assignment conveys all the debtor's property subject to the payment of his debts for the equal benefit of all his creditors who may accept under it, it is otherwise valid, except as against *proceedings reasonably taken under the bankrupt Act*."

"Though a general assignment under the State law was made for the benefit of such creditors only as release the assignor from further liability, it was not invalid as a transfer of the property, *except upon proceedings against the assignor under the Bankrupt Act*, and a nonaccepting creditor could not subject to his garnishment the proceeds of the property in the hands of the assignee."

It has doubtless already been noted that the Arkansas Insolvency Law does not of itself undertake to discharge the debtor from further liability. Nothing is attempted by force of law. The Supreme Court of Arkansas calls attention to this fact in the opinion in the case at bar. Only by *voluntary* action on the part of creditors is the debtor discharged. The debtor could be discharged by such voluntary settlements with his creditors without the interposition of any court proceedings. If plaintiff in error is correct in principle, then every voluntary compromise between an insolvent debtor and his creditor is utterly null and void, ab initio, although never questioned in, or by, any court of competent jurisdiction. Such adjustments and settlements would be void just because a limited Bankruptcy Act is in existence by force of which the right of private contract is destroyed. We submit that there is no such policy of law. On the contrary, private settlements of litigation is always encouraged.

"*** the fact that a State law does not contain a provision for the discharge of the debtor would have considerable weight in favor of holding that such law was not suspended by the Bankruptcy Act."

6 *Remington on Bankruptcy*, Sec. 2110, p. 192.
Stellwagen v. Clum, 245 U. S. 605, 62 L. ed. 507.

The case of Re Tarnowski, 191 Wis. 279, 49 A. L. R. 686, and note, cited by plaintiff in error, plainly states the only point settled by that decision as follows:

"The question presented is whether the courts of this state have power to discharge the bankrupt or insolvent debtor from his debts."

No such point is presented in the case at bar. Any discharge of the debtor comes from the voluntary action of his creditors, and not by force of any law of the State of Arkansas.

3. The entire argument of plaintiff in error is based upon the false assumption that resort to the Federal Bankruptcy Court is compulsory upon all persons, and that all voluntary contracts and settlements made without such resort to bankruptcy proceedings are void. This reasoning is clearly fallacious.

"The Bankruptcy Act imposes no obligations upon an insolvent debtor to take advantage of its provisions by having himself adjudicated a voluntary bankrupt, or upon his creditors to proceed for an adjudication of involuntary bankruptcy against him."

7 Corpus Juris, p. 21, Sec. 13, and cases cited.

If this were not true, and if the position of plaintiff in error were tenable, then *every act of bankruptcy* would be *void* rather than *voidable*. Every mortgage, deed of conveyance, general assignment for the benefit of creditors and every other act of bankruptcy by an insolvent debtor, would be utterly void even though the jurisdiction of a bankruptcy court were never invoked. However, we know that all of these other acts of bankruptcy are not void, but are merely voidable when the jurisdiction of a bankruptcy court is properly invoked in apt time. We know of no reason why only this one act of bankruptcy involved in the appointment of a trustee by a State court should be singled out from all the others and that act of bankruptcy alone be held utterly null and void ab initio, regardless of whether the jurisdiction of a bankruptcy court was ever invoked. Such a holding would result in confusion worse confounded—a chaotic condition in business affairs, which, we submit, this court will never countenance. Only by

the actual assertion of jurisdiction by a Federal Court of Bankruptcy, properly invoked, can it ever be known, or at least judicially determined, whether the peculiar facts and circumstances of each particular case do, or do not, fall within the purview of the Federal Bankruptcy Act.

4 Plaintiff in error quotes considerably from Mr. Remington in his excellent work on Bankruptcy.

Further quotations from Mr. Remington largely destroy the suggested conclusive inferences which plaintiff in error seeks to find in that exhaustive work in corroboration of its untenable position. For instance:

"State insolvency and bankruptcy laws are not suspended nor rendered inoperative, nor void at all, as to those classes of persons exempted from, or not included within, the operation of the Federal Act."
5 *Remington on Bankruptcy*, Sec. 2108, p. 178, and cases cited.

The case at bar is one of those classes which are not included within the *operation* of the Federal Act. We know of no way in which the case at bar could be included within the operation of the Federal Act unless the plaintiff in error were allowed

to invoke the extraordinary remedy of mandamus against either the debtor himself (in spite of his former discharge in bankruptcy within six years), or against some two other creditors who had debts sufficient to aggregate with the plaintiff in error, more than $500.00.

Again unless a corporation is among the classes that can be proceeded against in bankruptcy, it is still subject to the State Insolvency Law." 5 *Remington on Bankruptcy*, Sec. 2108, p. 182.

Under peculiar facts in the case at bar, I. Pinkus is just as immune from the *operation* of the Federal Bankruptcy law as would be a corporation which is among the classes that cannot be proceeded against in bankruptcy.

Sections 2103, Vol. 5, Remington on Bankruptcy, makes it plain that proceedings under State insolvency laws are superseded *only* "by the Federal Bankruptcy *proceedings*."

"It is therefore very clear that when Congress has exercised the power thus conferred their action must necessarily control or limit the exercise of the power of the States over the *same subject matter*; and that whenever any State legislation, *or any action of the State Courts*, comes practically *into actual conflict* with the proper execution of the laws of Congress, constitutionally passed under such grant or power, State legislation and the juris-

diction and action of the State Courts must yield to the paramount authority of the national government."

Mauron v. Carpet Lining Co. 6 A. B. R., 737, 23 R. I. 324, 50 Atl. 331, at 5 Remington on Bankruptcy, Sec. 2104, p. 168.

In the case at bar there has been no "actual conflict" between the two jurisdictions, nor could there be any such actual conflict when we again remember that plaintiff in error concedes that it could never secure the necessary co-operation in order to give jurisdiction to a Federal Bankruptcy Court.

Section 2105 in Volume 5, *Remington on Bankruptcy*, and cases cited, calls attention to the fact that many State insolvency laws are still in limited force and effect, as follows:

"This constitutional provision does not prohibit the states enacting state bankruptcy laws (cases cited). Some of the states have very complete bankruptcy laws, providing for both involuntary and voluntary proceedings, as, for instance, Massachusetts, whose law is called an insolvency law, yet possesses all the distinguishing features of a true bankruptcy law, even to the discharge of debtors from the remainder of their debts. So, also, with the following states: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, *Ark-*

ansas, California, Georgia, Louisiana, Maryland, Minnesota, Nevada, Pennsylvania and North Dakota. But as to Pennsylvania, *one case* holds contra."

"A more or less indefinite, and I think misleading, notion has sometimes been expressed that the Constitution has committed to Congress the whole subject of bankruptcy and insolvency for appropriate legislation, and that therefore whenever Congress passes a general bankrupt law, which it has done four times, each time naming it a 'uniform system of bankruptcy', all power on the part of the States to legislate upon the subject of bankruptcy or insolvency is immediately suspended. The premise may be deemed to be correct, but it seems to me that *the conclusion is entirely erroneous*. Congress is not obliged to legislate on the whole subject of bankruptcy, it may deal with ony one or several parts. It is the enactment by Congress of a *law applicable to a particular case* which suspends any State law which otherwise would be applicable to that case. If every case of bankruptcy or insolvency were within the *operation* of a National Bankrupt Act, then no possible State law on the subject of bankruptcy or insolvency would have any vigor, but every such law would ipso facto be suspended."

Potts v. Smith Mfg. Co., 25 Pa. Super. Ct. 209, as quoted at
5 *Remington on Bankruptcy* Sec. 2105, p. 170.

We again urge that the present Bankruptcy Act is not applicable to the particular case at bar

because three creditors owing claims aggregating more than $500.00 cannot be found to invoke the jurisdiction of a bankruptcy court, and the debtor himself is denied relief in a Federal Bankruptcy Court because of his former adjudication within six years. It seems to us that this reasoning is sound, and our conclusion impregnable.

"It is perfectly plain that State systems of voluntary and involuntary bankruptcy may remain today in full operation upon large numbers of insolvent natural persons and corporations who cannot be brought within the operations of the National Bankrupt Act under any possible state of facts."

"It is also, it seems to me, equally plain that a state system of involuntary insolvency also remains in full operation upon persons and corporations, who are as possible bankrupts within the operation of the National Bankruptcy Act, so far as the state system deals with cases of which the bankrupt courts under the Federal act *can obtain no jurisdiction*. To state the point otherwise, I may say that to my mind there is no distinction between an insolvent insurance company, railroad company or laundry company, which owes $100,000 of debts and has committed an act of bankruptcy, on the one hand, and an insolvent manufacturing, mercantile or trading company which has committed no act of bankruptcy, or does not owe debts amounting to $1000, on the other hand, in respect of the operation of the National Bankruptcy Act and the New Jersey Insolvent Corporation Act. In neither instance is a case presented of which the Federal

bankrupt court can take cognizance. Each case, therefore, is within the full and complete operation of the New Jersey statute."

Singer v. Nat'l Bedstead Co., 65 N. J. Eq. 290, 55 Atl. 868, quoted at 5 *Remington on Bankruptcy*, Sec. 2106, p. 175.

And, we submit, there is no distinction in principle between the cases used as illustrations in the foregoing quotation and the case at bar, because under the facts in the case at bar it is just as impossible for the Federal bankruptcy court to acquire jurisdiction because of the refusal of the necessary parties to act in invoking such jurisdiction. It is just as though there were no applicable act of Congress, so far as the possibility of a conflict of jurisdiction is concerned.

IV.

UNITED STATES SUPREME COURT DECISIONS. It is conceded that the precise point now presented has never been determined by this Honorable Court.

If the former decisions of this court have not indicated its approval of the doctrine of the decision of the Arkansas Supreme Court now appealed from, certainly no former decision of this court implies disapproval.

1. The early case of *Sturgis v. Crowninshield*, (1819), 4 Wheat. 122, holds that when Congress has legislated and by its legislation indicated its purpose to cover *the entire field*, the power of the State legislatures upon the subject ceases. Congress has expressly refused to cover the "entire field" of insolvent debtors. It does not cover compulsory action under the facts in the case at bar. The Arkansas State Insolvency Law does cover the entire field of insolvent debtors, and continues to operate with full force and vigor in every instance where the jurisdiction of Federal bankruptcy court is not invoked, and especially where such jurisdiction under the peculiar facts in the case cannot be invoked.

2. *In re Watts*, 190 U. S. 1, 23 Sup. Ct. R. 718, is cited as the basis of decision by practically all of the cases relied upon by plaintiff in error, and is cited by Judge Trieber as the authority for his decision in the case of *Weedman Stave Co.*, 199 Fed. 951. An examination of the case quickly discloses that it involved a rather violent clash and conflict of jurisdiction between the Federal and State courts. The jurisdiction of the Federal Bankruptcy court had been properly invoked, and, of course, the jurisdiction of the State courts under

a State insolvency law was immediately suspended and superseded. Hence, that decision is not applicable in the case at bar, and does not support the broad statements found in some of the lower court decisions. On the contrary, it seems to us when the opinion is carefully read, it plainly assumes the jurisdiction of State courts to proceed under State insolvency laws until jurisdiction of a Federal Bankrupt court is properly invoked covering the same subject matter, and affecting the same persons. The right of the State courts to proceed to that point is not questioned.

Chief Justice Fuller in delivering the opinion of the court uses the following carefully chosen language:

"The bankruptcy law is paramount, and the jurisdiction of the Federal courts in bankruptcy, *when properly invoked* in the administration of the affairs of insolvent persons and corporations, is essentially exclusive. Necessarily, when like proceedings in the State courts are *determined by the commencement of proceedings in bankruptcy*, care has to be taken to avoid collision in respect of property in possesion of the state courts."

(All italics in quotatoins throughout this brief are ours)

There has been no "collision" of jurisdiction

in the case at bar, and plaintiff in error complains that it was impossible for it to bring about, or cause, any such collision.

It will be noted from the above excerpt that possession by the State courts of property which later becomes the subject of bankruptcy is assumed to be a rightful possession. The clear inference, if not the express declaration, is that the State courts have a right to take possession and assume jurisdiction and to proceed under the State insolvency law until such proceedings "are determined by the commencement of proceedings in bankruptcy." In support of this inference, we quote further from the opinion as follows:

> "The State court was a court of original jurisdiction. On the face of its record *its jurisdiction had been properly invoked*, and been properly exercised, and was not open to collateral attack. Assuming that the proceedings in bankruptcy superceded further proceedings in the State court, and that nothing remained for the latter but to direct the surrender of the assets and wind up all the accounts, the district court was of the opinion that it might by summary proceedings take the assets out of the possession of the State court."

Mr. Chief Justice Fuller in this last quotation expressly declares that the jurisdiction of the state court "had been properly invoked." The proper

practice is clearly pointed out in a later paragraph in the opinion which reads as follows:

"It has been already assumed that the bankruptcy proceedings operated to suspend the further administration of the insolvent's estate in the State court, but it remained for the State court to transfer the assets, settle the accounts of its receiver and close its connection with the matter. Errors, if any, committed in so doing could be rectified in due course in the designated way."

"We can but express our regret at the unfortunate collision between the two courts, and believe that the considerate observance of the rule of comity is adequate to avert such occurrence."

Re Watts, 190 U. S. 1, 23 Sup. Ct. Rep. 718 at 718, 724, 725, 726, and 727.

Therefore, instead of supporting the position of plaintiff in error in the case at bar, we submit that this leading case of *Re Watts, supra*, clearly supports the decision of the Arkansas Supreme Court.

3 *Southern Railway Co. v. Railroad Commission*, 236 U. S. 439, 35 Sup. Ct. Rep. 304, 59 L. ed. 661, is, in principle, in perfect harmony with the reasoning of the Supreme Court of Arkansas in the case at bar. The court holds:

"Congress, of course, could have circumscribed its regulations so as to occupy a limited field (cases cited). But so far it did legislate, the exclusive effect of the safety appliance act did not relate merely to details of the statute and the penalties it imposed, but extended to the whole subject of equipping cars with appliances intended for the protection of employees." 59 L. Ed. at p. 605.

It has already been repeatedly pointed out that in the matter of bankruptcy Congress did circumscribe its regulations so far as to occupy only a limited field. Hence, the decision is not in point in the case at bar, and plaintiff's citation of the case as authority for its position merely demonstates the extremity to which learned counsel have gone in search of consolation.

4. *Stellwagen v. Clum*, 245 U. S. 605, 38 Sup. Ct. Rep. 215, 62 L. Ed. 507, is much nearer being in point. In this comparatively recent case this court holds that: "State laws are * suspended *only to the extent of actual conflict* with the system provided by the Bankruptcy Act of Congress." 62 L. Ed. at p. 511.

This decision, like the decision in *Re Watts*, *supra*, plainly infers the rightful jurisdiction of a state court to proceed under a State Insolvency Law, until such jurisdiction is terminated and dis-

placed by actual proceedings in the Federal bankruptcy court.

We further quote from the opinion as follows:

"True it is that general assignments for the benefit of creditors are acts of bankruptcy ***, and since the amendment of 1903 *** a receivership of an insolvent debtor with a view to distribution of his property for the benefit of creditors will have the like effect. *** In such cases the *bankruptcy proceedings*, taken within four months, *displace* those in the State court *and terminate the jurisdiction of the latter* ***"

"That part in Section 6343 (Ohio) which enables the court to appoint a receiver to take charge of all the assets of the debtor or debtors, including the property conveyed, and administer the same for the equal benefit of creditors, is the new feature of the law. It is apparent that this section intends to permit the appointment of a receiver to take charge of all the assets of the debtor when the provisions of the statute apply as to the debtor and his transferee and the latter is required to know of the fraudulent intent on the part of the debtor."

"*Creditors are not thereby deprived of rights*, but in case of bankruptcy proceedings within four months of a general assignment for creditors, as was the case here, the property may be brought into the bankruptcy court, or, as in this case, may be in its possession and be retained in that court to be administered for the benefit of general creditors. This state statute is not opposed to the policy of the Bankrupt Law or in contravention of the rules and

principles established by it with a view to a fair distribution of the assets of the insolvent. It is only state laws which conflict with the bankruptcy laws of Congress that are suspended; those which are in aid of the Bankruptcy Act can stand." (cases cited).

"There is much discussion in the books as to what constitutes a Bankruptcy Act as distinguished from an insolvency law. It is settled that a State may not pass an insolvency law which provides for a discharge of the debtor from his obligations, which shall have the effect of a bankruptcy discharge as to creditors in other states, and this although no general Federal Bankruptcy Act is in effect. And while it is not necessary to decide that there may not be state insolvent laws which are suspended although not providing for a discharge of indebtedness, all the cases lay stress upon the fact that one of the principal requisites of a true bankruptcy law is for the benefit of the debtor in that it discharges his future-acquired property from the obligations of existing debts." 62 L. Ed. pp. 511-512.

It is probably unnecessary to again call the attention of this court to the fact that the Arkansas Bankruptcy Act does not, as a matter of law, undertake to discharge the liability of insolvent debtors to all creditors who do not voluntarily file the statutory stipulations. And they still have every right against the debtor and his after-acquired property.

And again, in view of the foregoing decision, we insist upon the distinction of the case at bar in that it presents no "actual conflict" with any authorized Federal Bankrupt proceeding.

V

DO FACTS CONSTITUTE A GENERAL ASSIGNMENT FOR THE BENEFIT OF CREDITORS?

In no event is the plaintiff in error entitled to the relief which it has sought in the State Courts, and which it now seeks in this court.

The construction of the Arkansas Insolvency Act by the Arkansas Supreme Court is final. "The holding of the State courts as to whether an assignment law amounts to a general insolvency statute will control." 8 *Remington on Bankruptcy*, Sec. 2110 p. 192.

In the case at bar, the Arkansas Supreme Court holds:

"The Arkansas statute, with reference to insolvent debtors, simply authorizes a debtor to go into Chancery court and ask for the appointment of a receiver to take charge of his property and distribute the same among his creditors. *The effect of this is the same as if the debtor made an as-*

signment of his property for the benefit of his creditors ***" (Rec. p. 27).

The plaintiff in error complains mightily of the provision which grants a preference to those creditors who voluntarily agree to release the debtor from further liability. Section 5888 Crawford & Moses' Digest of the Statutes of Arkansas.

IF that provision were void for any reason, still the plaintiff in error is not entitled to the relief for which it prays, because:

Where an assignment by an insolvent debtor in Arkansas is declared void for any cause, "the same shall then be considered and treated as a general assignment of all his property, not exempt from execution, for the benefit of all his creditors pro rata, and said property shall be disposed of and distributed for their benefit under the orders and direction of said court and the assignee shall become subject to the control and direction of said chancery court in the same manner as if he had been appointed a receiver to take charge of said fund in court." Sec. 489 Crawford & Moses' Digest of the Statutes of Arkansas. And no one of such creditors has the right to subject the fund to the payment of all his debt to the exclusion of the debts of others.

Section 489 Crawford & Moses' Digest of the Statutes of Arkansas.

Tapp v. Williams, 83 Ark. 182.

State National Bank v. Wheeler-Motter Merc. Co. 104 Ark. 222.

Nelson v. Harper, 122 Ark. 39 et seq.

Brown v. Wilkes, 153 Ark. 545.

Since the plaintiff in error has sought relief in the State Courts of Arkansas, it must accept such relief, and only such relief, as the laws of the State of Arkansas authorize in her own State courts. Even this court is bound by the construction of the Arkansas Supreme Court of rights and remedies afforded by the Arkansas laws.

This court has expressly recognized the rights of states to regulate and enforce all manner of assignments for the benefit of creditors, so long as the jurisdiction of a Federal Bankruptcy Court has not been actually invoked. On this principle, the case of *Randolph & Randolph v. Scruggs*, 190 U. S. 533, 23 Sup. Ct. Rep. 710, is in point. The decision clearly assumes that State insolvency and assignment laws are superseded only when bankruptcy proceedings have actually begun. We quote as follows:

"The assignment was not illegal. It was permitted by the law of the state, and cannot be taken to have been prohibited by the bankruptcy law absolutely in every event, whether proceedings were instituted or not. *** It has no general fraudulent intent. *It was voidable only in case bankruptcy proceedings should be begun.* At the time when it was made the institution of such proceed-

ings were uncertain. It seems to us that it would be a hard and subtle construction to say ***, that when they were instituted they not only avoided the assignment, but made it illegal by relation back to its date, when, if they had not been started, it would have remained perfectly good."

***

"*But the assignee is acting lawfully in what he does before proceedings in bankruptcy are begun*, and, although it may be assumed that the avoidance of the assignment relates back to the date of the deed, still, so far as his services, or services procured by him, tend to the preservation or benefit of the estate, the mere fiction of relation is not enough to forbid an allowance for them. *** This is the doctrine of the state courts with reference *to the operation of insolvent laws upon voluntary assignments*, and of the better-considered decisions under the bankrupt laws. (Cases cited)." 23 Sup Ct Rep at p 712

See also *Galbraith v. Vallely*, 256 U. S. 46, 65 L. ed. 823, to the same effect.

Now by its action in the State courts, the plaintiff in error is clearly seeking a preference itself. It seeks to collect in full its debt to the detriment of all other creditors of L. Pinkus. This result, the Supreme Court of Arkansas holds in the case of *Nelson v. Harper*, 122 Ark. 39, is repugnant to the laws of the State of Arkansas, and cannot be accomplished. 122 Ark. at p. 44.

VI.

CONCLUSION. Defendants in error respectfully submit that the decision of the Supreme Court of Arkansas is right; that its reasoning is sound and in conformity with the reasoning of this Honorable Court as far as it has gone toward the precise point involved; and that it will be affirmed. If the position of the plaintiff in error were sustained, what an anomalous legal empasse would be presented by this record. Here we have an embarrassed debtor who is no longer able to operate his small business. He can secure no more credit. He cannot go forward. He cannot even "flounder along" any further. He cannot himself invoke the jurisdiction of a Federal Bankruptcy court to solve the problem. He is without the pale of relief in that court. He has been discharged within six years, and no Federal bankruptcy court has jurisdiction over his person to grant relief. All creditors refuse to invoke the jurisdiction of a Federal Bankruptcy Court except ONE, who seeks an unfair preference by rushing in to seize all that is left for the satisfaction of its debt in full. What can the insolvent Pinkus do? The only open door is the equity jurisdiction of the Chicot Chancery Court under the State Insolvency Act. The action of that court conflicts with no other jurisdiction,

and meets no opposing force in collision. All persons affected, save only the one greedy creditor, are perfectly satisfied with the equitable distribution to be made. If this one single greedy creditor who opposes the only solution offered were willing to be fair, and prorate its debt with all of the other creditors, this case could never have reached this court. However, the plaintiff in error was not willing to share equally with the other creditors by filing its voluntary stipulation in the Chicot Chancery Court, but seeks to gain an unconscionable advantage by resorting to such features of the laws of the State of Arkansas as afford it a hearing, but repudiates those features of the Arkansas law which would compel it to do equity and be fair with all other creditors. This creditor, the plaintiff in error, is not compelled by law to cancel its indebtedness against the insolvent debtor. The law does not undertake to discharge the liability. But the courts of Arkansas do insist that if this creditor invoke the assistance of her courts, then the creditor shall abide by the rules of fairness and equity embodied in her statutes.

With this sovereign right, we submit, this Honorable Court will not interfere, but the decision of the Supreme Court of Arkansas will be affirmed.

Finally, even if this Honorable Court should, when the precise question is properly presented to it, declare the Arkansas Insolvency Act utterly void as in conflict with the Federal Bankruptcy Act even in cases to which the latter act is not applicable, or in which the operation is not invoked; still, the Supreme Court of Arkansas properly sustained the action of the Chicot Chancery Court in dismissing plaintiff in error's bill for want of equity. For, if the State Insolvency law be void, Sec. 489 of Crawford & Moses' Digest of the Statutes of Arkansas (hereinabove quoted) becomes applicable to this case, and plaintiff in error, although entitled to disregard the Chancery Court's order allowing a preference to the claims of creditors who filed stipulations agreeing to accept pro rata payments in full settlment of their claims, should have filed its claim and insisted upon it being put on a parity with the claims of all other creditors, by receiving its pro rata payment out of the assets of the insolvent debtor being administered by the court. That was the equitable relief, and the only relief it was entitled to under the laws of Arkansas set forth in Sec. 489 of C. & M. Digest. The constitutionality of that law of procedure has not been questioned—certainly not in this case. Not having asked for the relief to which it was entitled, its bill in equity asking inequita-

ble relief to which it was not entitled in the courts of Arkansas, was properly dismissed. It follows that this appeal should be dismissed, regardless of the merits of the only issues discussed by counsel for plaintiff in error, and hereinbefore principally stressed.

Respectfully submitted,

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I. PINKUS, GEORGE FRANKLIN,

SAM DESSENT, et al.,

Defendants in error

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